

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 22-cv-22671-CMA

DELIO BATISTA, CARLOS LOPEZ, Miami, Florida
MARIANA LOPEZ and RAFAELA
VALIENTE, July 10, 2023

Plaintiffs, 9:16 a.m. to 5:23 p.m.

vs. Courtroom 13-3

AVANT ASSURANCE, INC., (Pages 1 to 214)
REINIER CORTES and ANDREA
GONZALEZ QUINTERO,

Defendants.

JURY TRIAL EXCERPT - DAY 1
BEFORE THE HONORABLE CECILIA M. ALTONAGA,
CHIEF UNITED STATES DISTRICT JUDGE

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1 (The proceedings excerpt was held at 9:16 a.m.)

2 THE COURT: Good morning.

3 ALL PARTIES: Good morning.

4 THE COURT: Please state your appearances.

5 MR. CUMMINGS: Toussaint Cummings on behalf of the
6 Plaintiff.

7 MR. POLLOCK: Good morning, Your Honor. Brian Pollock
8 for the Plaintiffs, who are at our table. Would you like us to
9 introduce them?

10 THE COURT: Yes, please.

11 MR. POLLOCK: All right. To the left of Mr. Cummings
12 is Mr. Batista. He's putting on his sweater. To his left is
13 Ms. Lopez; to her left is Ms. Valiente and to her left on the
14 end is Mr. Lopez.

15 THE COURT: Okay. Thank you.

16 MR. POLLOCK: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. TROPP: Good morning, Judge. I'm going to make
19 sure I speak into the microphone today.

20 THE COURT: Good morning.

21 MR. TROPP: Daniel Tropp on behalf of the Defendants.

22 MR. CUETO: Santiago Cueto on behalf of the
23 Defendants.

24 MR. CORTES: Good morning. Reinier Cortes.

25 MS. GONZALEZ QUINTERO: Good morning. Andrea

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1 Gonzalez.

2 THE COURT: Very good. Good morning.

3 Please be seated.

4 We're ready for the jury. Any issues before we bring
5 the jurors inside?

6 MR. POLLOCK: There's an issue with the demonstratives
7 that the Defendants want to use in their opening. I don't know
8 if you want to address it before or after the jury comes in.

9 THE COURT: After we pick the jury.

10 MR. POLLOCK: No problem.

11 (Pause in proceedings.)

12 THE COURTROOM DEPUTY: Are you ready, Judge?

13 THE COURT: I am. Thank you.

14 COURT'S PRELIMINARY JURY INSTRUCTIONS

15 THE COURT: Thank you. Please be seated.

16 Members of the jury, now that you have been sworn, I
17 need to explain some basic principles about a civil trial and
18 your duty as jurors. These are preliminary instructions. I
19 will give you more detailed instructions at the end of the
20 trial.

21 It is your duty to listen to the evidence, decide what
22 happened and apply the law to the facts. It is my job to
23 provide you with the law that you must apply, and you must
24 follow the law even if you disagree with it.

25 You must decide the case on only the evidence

1 presented in the courtroom. Evidence comes in many forms. It
2 can be testimony about what someone saw, heard or smelled. It
3 can be an exhibit or a photograph. It can be someone's
4 opinion. Some evidence may prove a fact indirectly.

5 Let's say a witness saw wet grass outside and people
6 walking into the courthouse carrying wet umbrellas. This may
7 be indirect evidence that it rained, even though the witness
8 did not personally see it rain. Indirect evidence like this is
9 also called circumstantial evidence. It's simply a chain of
10 circumstances that likely proves a fact.

11 As far as the law is concerned, it makes no difference
12 whether evidence is direct or indirect. You may choose to
13 believe or disbelieve either kind. Your job is to give each
14 piece of evidence whatever weight you think it deserves.

15 Now, during the trial, you will hear certain things
16 that are not evidence and you must not consider them. First,
17 the lawyers' statements and arguments are not evidence. In
18 their opening statements and closing arguments, the lawyers
19 will discuss the case. Their remarks may help you follow each
20 side's arguments and presentation of evidence, but the remarks
21 themselves are not evidence and should not play a role in your
22 deliberations.

23 Second, the lawyers' questions and objections are not
24 evidence. Only the witnesses' answers are evidence. Do not
25 decide that something is true just because a lawyer's question

1 suggests that it is. For example, a lawyer may ask a witness,
2 You saw Mr. Jones hit his sister, didn't you? Well, that
3 question is not evidence of what the witness saw or what
4 Mr. Jones did unless the witness agrees with it in the
5 witness's answer.

6 There are rules of evidence that control what the
7 Court can receive into evidence. When a lawyer asks a witness
8 a question or presents an exhibit, the opposing lawyer may
9 object if he thinks the rules of evidence do not permit it. If
10 I overrule the objection, then the witness may answer the
11 question or the Court may receive the exhibit.

12 If I sustain the objection, then the witness cannot
13 answer the question and the Court cannot receive the exhibit.
14 When I sustain an objection to a question, you must ignore the
15 question and not guess at what the answer might have been.

16 Sometimes I may disallow evidence -- this is also
17 called striking evidence -- and order you to disregard or
18 ignore it. That means that you must not consider the evidence
19 when you are deciding the case.

20 I may allow some evidence for only a limited purpose.
21 When I instruct you that I have admitted an item of evidence
22 for a limited purpose, you must consider it for only that
23 purpose and no other.

24 As I mentioned earlier, to reach a verdict, you may
25 have to decide which testimony to believe and which testimony

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1 not to believe. You may believe everything a witness says,
2 part of it or none of it.

3 When considering a witness's testimony, you may take
4 into account the witness's opportunity and ability to see, hear
5 or know the things the witness is testifying about, the
6 witness's memory, the witness's manner while testifying, any
7 interest the witness has in the outcome of the case, any bias
8 or prejudice that the witness may have, any other evidence that
9 contradicts the witness's testimony, the reasonableness of the
10 witness's testimony in light of all the evidence and any other
11 factors affecting believability.

12 At the end of the trial, I will give you additional
13 guidelines for determining a witness's credibility.

14 As I mentioned earlier, the Plaintiff has the burden
15 of proving their case by what the law calls a preponderance of
16 the evidence. That means that the Plaintiff must prove that in
17 light of all the evidence what they claim is more likely true
18 than not.

19 So if you could put the evidence favoring the
20 Plaintiffs and the evidence favoring the Defendants on opposite
21 sides of balancing scales, Plaintiffs need to make the scales
22 tip to their side. If the Plaintiffs fail to meet this burden,
23 you must find in favor of the Defendants.

24 To decide whether any fact has been proved by a
25 preponderance of the evidence, you may, unless I instruct you

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1 otherwise, consider the testimony of all witnesses, regardless
2 of who called them, and all exhibits the Court allowed,
3 regardless of who produced them.

4 After considering all the evidence, if you decide a
5 claim or fact is more likely true than not, then the claim or
6 fact has been proved by a preponderance of the evidence.

7 While serving on the jury, you may not talk with
8 anyone about anything related to the case. You may tell people
9 that you are a juror and give them information about when you
10 must be in court, but you must not discuss anything about the
11 case itself with anyone.

12 You should not talk about the case with each other
13 until you begin your deliberations. You want to make sure that
14 you have heard everything -- all the evidence, the lawyers'
15 closing arguments and my instructions on the law -- before you
16 begin deliberating. You should keep an open mind until the end
17 of the trial. Premature discussions may lead to a premature
18 decision.

19 In this age of technology, I want to emphasize that in
20 addition to not talking face-to-face with anyone about the
21 case, you must not communicate with anyone about the case by
22 any other means. This includes e-mails, text messages and the
23 Internet, including social networking websites such as Facebook
24 and Twitter. You also should not Google or search online or
25 offline for any information about the case, the parties or the

1 law.

2 The law forbids jurors to talk with anyone else about
3 the case and prevents anyone to talk to jurors about it. It is
4 very important that you understand why these rules exist and
5 why they are so important.

6 You must base your decision only on the testimony and
7 other evidence presented in the courtroom. It is not fair to
8 the parties if you base your decision in any way on information
9 you acquire outside the courtroom. For example, the law often
10 uses words and phrases in special ways, so it is important that
11 any definitions you hear come only from me and not from any
12 other source.

13 Only you jurors can decide a verdict in this case.
14 The law sees only you as fair and only you have promised to be
15 fair. No one else is so qualified.

16 So let's walk through the trial. First, each side may
17 make an opening statement, but they don't have to. Remember,
18 an opening statement is not evidence, and it is not supposed to
19 be argumentative. It is just an outline of what that party
20 intends to prove.

21 Next, the Plaintiffs will present their witnesses and
22 ask them questions. After the Plaintiffs ask questions, the --
23 question the witnesses, the Defendants may ask the witnesses
24 questions. This is called cross-examining the witnesses. Then
25 the Defendants present their witnesses and the Plaintiffs may

1 cross-examine them. You should base your decision on all of
2 the evidence, no matter which parties presented it.

3 After all the evidence is in, the parties' lawyers
4 present their closing arguments to summarize and interpret the
5 evidence for you and I give you instructions on the law.
6 Finally, you will go to the jury room to deliberate.

7 We'll hear opening statements at this time. Each side
8 has 20 minutes to present. We'll hear from Plaintiffs first.

9 OPENING STATEMENT ON BEHALF OF THE PLAINTIFFS

10 MR. POLLOCK: May it please the Court.

11 Ladies and gentlemen, thank you for your time and
12 attention in performing what is actually a great public service
13 in serving on a federal jury. Not many people actually are
14 able to do this, and this is one of the great foundations of
15 our society here in the U.S. It is -- one of the foundations
16 of our justice system is that we can come to court and have a
17 judge decide legal issues and you decide the facts.

18 And so I introduce myself, Toussaint, Delio, Mariana,
19 Rafaela and Carlos. I'll try to keep the same order, if that
20 makes a difference. But we're here because we filed a -- they
21 filed a civil lawsuit because they claim that they're owed
22 wages. And what are they owed?

23 So the first thing is that they should've been paid
24 overtime wages and classified as employees instead of the
25 Defendants paying them as independent contractors, and so --

1 didn't pay them overtime, so they didn't care how many hours
2 they worked.

3 The next thing is that there was an agreement in place
4 where my clients would receive commissions based on the
5 insurance policies they put in place, how many members they
6 were able to sign up. And they were entitled to bonuses and
7 submissions either under a period of a contract or that the
8 Defendants -- that Avant Assurance was unjustly enriched by the
9 work that my clients performed.

10 So what we're looking for and what we're asking you to
11 award at the end of this case are the wages that my clients
12 earned -- the overtime, the commissions and the bonus. Nothing
13 more, but nothing less.

14 So my clients worked for Avant Assurance, which does
15 business under the fictitious name of the Obamacare Insurance
16 Center. And we're here to decide Avant Assurance -- my clients
17 are suing its owners -- Mr. Gonzalez -- excuse me -- Mr. Cortes
18 and his wife, Ms. Gonzalez -- and you can decide whether they
19 are personally responsible for the overtime wages as employers
20 under the law, under the Fair Labor Standards Act.

21 And so the Defendants in this case, they sell health
22 insurance, and they focus on selling as many policies as they
23 can during the opening enrollment period that runs from
24 November 1st through the end of January. For people who don't
25 get insurance through their employer, you go on the

1 Marketplace, and these are -- this is a company that gets a
2 bunch of inbound leads, and they provide all the leads.

3 They provide the workspace, the workstation, the
4 computer, the software, the leads, everything, and all my
5 clients need to do -- just like the other insurance agent who
6 worked in Avant -- was walk in the door, sit down, log into the
7 computer and start taking calls. They didn't make outbound
8 calls. They took them. And they only talk to the potential
9 insurance members or insureds that they got through the leads
10 that the Defendants would provide.

11 So they would log into the computer. They had their
12 headset plugged into the computer via Softphone, so not a
13 physical phone at your desk. And once you're logged in, you
14 start getting calls, kind of like a customer support center.
15 So you start getting calls and you sell the insurance and you
16 have people sign up.

17 And my clients were offering the insurance that Avant
18 Assurance authorized them to sell. And these are some of the
19 companies that they were authorized to sale. And once the lead
20 would decide on which insurance policy they wanted to sign up
21 for, my clients wouldn't do anything else. They would just
22 transfer the call to the customer support team from Avant to go
23 ahead and handle -- and put in the rest of the information for
24 the transaction. But nonetheless, they claim my clients were
25 independent contractors.

1 So when they hired my clients, they paid their entire
2 workforce as 1099. Everybody was a 1099. This is a business
3 that sells insurance through insurance agents, but they didn't
4 have any employees. Everybody was a 1099. And because of
5 that, you're going to hear they didn't pay payroll taxes
6 because it's a 1099. They didn't pay Workers' Comp while my
7 clients were there, and they didn't pay overtime wages.

8 And so the first issue that you're going to be asked
9 to decide is whether my clients were really employees who
10 should've gotten a W-2, who should've gotten overtime. And
11 that's the first issue.

12 What's the evidence going to show? That my clients
13 were really employees. They should've gotten overtime. And
14 you're going to hear that the Defendants provided everything
15 that my clients needed to do the work. Not only that, they
16 controlled their work. They paid them by commissions and
17 bonuses.

18 My clients had no risk of losing money. They didn't
19 have any money that they spent. In fact, they couldn't go into
20 the office and be negative that day because they weren't
21 spending any money. So as long as they walked in and sold,
22 they would make money. Otherwise, they'd walk out and didn't
23 make any money. They couldn't go in the negative. They had no
24 risk of losing any money.

25 Avant provided, and its owners provided, everything --

1 computers, offices, phones, software. You're going to hear
2 about the cool software that they had that you log into and it
3 sends you leads and it tracks all the information.

4 And my clients were working so much, during the open
5 enrollment period especially. You'll hear about Rafaela when
6 she was working 9 in the morning until 9 at night. Who else
7 are you working for when you're working 12 hours a day?

8 So the Defendants are going to tell you, We didn't
9 control them. They could come and go as they please. But
10 we're going to have schedules that told my clients when to show
11 up, told them where to show up. You know, Hey, We have the old
12 office in Kendall. Now we want you to go to the new office in
13 Doral.

14 They controlled how the work would be done because
15 they had processes. We're going to send you the lead. You're
16 going to go ahead and try to get that member to sign up. And
17 once you do, it's going to go to the processing center and
18 they're gonna handle the back end. It's not my client's
19 decision. It was theirs.

20 And then they controlled the work by determining who
21 you're going to sell to. You're going to sell to the people
22 that -- the leads that come in. Because as long as you're
23 logged in, you're going to keep getting leads. And they're
24 going to tell you, Well, you could have not taken a lead.
25 Yeah, how long would that have lasted? And you can answer that

1 question.

2 They weren't paying my clients by some other
3 production. They were paying them by commission. So there was
4 a set commission that was going to be paid, along with a bonus,
5 and there was a written bonus plan. You're going to get a
6 bonus if you sell -- up to 350 members, you're going to get a
7 \$5,000 bonus. If you sell up to 599, you're going to get a
8 \$10,000 bonus. And if you sold 600 or more members, you're
9 going to get a \$25,000 bonus. And the bonuses are going to be
10 paid in April of 2022.

11 We talked about the fact that there's no risk because
12 my clients really didn't have a risk. They would go in and
13 work every day. And the Defendants provided everything -- the
14 office space, the desk, computers, the monitors, the software,
15 everything they needed to do. All they needed to do was walk
16 in the door, be able to use a computer and speak. That's it.

17 So they're not going have any evidence that shows that
18 my clients worked anywhere else during the hours that they were
19 sitting at Avant.

20 So the other thing is -- my clients' claim is
21 commissions and bonuses. And so the commissions -- that's
22 tough to read -- that Avant failed to pay the commissions and
23 bonuses and that they -- and that they didn't do so because
24 they kept the money that should've gone to my clients.

25 So Avant verbally at first offered to pay its agents

1 their commissions, and they were going to get a comission in
2 the 2020 to 2021 year because open enrollment starts in
3 November and ends in February. So they were going to roll out
4 their new payment plans every year.

5 And you saw the written commission and bonus plan for
6 2021 and 2022. My clients accepted that because they said,
7 Yes, this is what we're going to do. We're going to make
8 money, we're going to work on commission like other employees
9 who do, and as much as insurance policies we can place for
10 members that you provide us, we're going make more money.

11 And so what the evidence is going to show is that
12 Avant owes my clients not only the overtime that they worked
13 but also for the commissions and bonuses. And what you're
14 going to hear is that Mr. Cortes was -- he was the wizard
15 behind the curtain, that insurance companies would go ahead and
16 they would pay commissions -- they would pay the commissions to
17 his company and there would be a commission statement.

18 But what Mr. Cortes did was he put his name on every
19 insurance policy that was issued. He could've left it so that
20 my clients' names -- Delio's name was on a policy that went to
21 one member, Carlos was on a policy that went to another member
22 and Rafaela on the other member and Mariana on the other
23 member, and then you get the commission statement and it's
24 easy.

25 You look at the commission statement. Delio sold 65

1 policies, 130 policies, and you pay him for those. That's not
2 what he did. You can ask why didn't he do that. That would've
3 been so easy. Instead, he put his name on all the policies.
4 So when the commission statement comes in, it's Mr. Cortes's
5 name for every commission from every insurer.

6 So what he does is he says, Well, you're going to have
7 to trust me. Trust me that I'm going to do the right counting.
8 I'm going to put my name on every policy, but just trust me.
9 I'm going to go through the software and I'm going to determine
10 which insurance policies you placed and which Mariana placed
11 and which Rafaela placed, which Delio placed and which the
12 other insure -- other insurance agents placed. Just trust me
13 on that.

14 I'm not going to show you the commission statements
15 from the insurance companies, and it's just going to be based
16 on the software. I know there's going to be differences, but
17 you're going to have to trust me. And you're going to decide
18 whether you want to trust Mr. Cortes. And you are going to
19 hear from my clients about how many members they actually
20 signed up and how they know that.

21 Now, what you may hear from the Defendants is that
22 they're going to try to distract you, right. I mean, it makes
23 sense. Because -- and ask why they're going to try to distract
24 you and what this has to do at all with our case. They're
25 going to talk about how before we filed the lawsuit, they sent

1 a letter to Mariana, to Carlos to complain that they were
2 stealing their customers after they left. You're going to hear
3 that after we filed this lawsuit, they sued Rafaela and
4 Mariana.

5 What does that have to do with the money that my
6 clients earned while they were working there? You're not going
7 to hear the Judge tell you, Oh, the law allows you to reduce
8 their pay. This all happened after the fact, so why are you
9 going to bring it up?

10 What they can't explain is how or why anything that my
11 clients did after they left Avant has anything to do with this
12 case. In fact, they didn't send a letter to Delio; they didn't
13 send a letter to Rafaela. It doesn't matter.

14 So at the end of this case, you're going to hear the
15 evidence and I'll do some fancy -- not super fancy, but kind of
16 like this display because it's a case about wages and you've
17 got to stay interested. And at the end of the case, after you
18 hear the witnesses testify and review the evidence, Judge
19 Altonaga is going to again instruct you on the law.

20 And we have jury instructions. It's going to tell
21 you -- Your Honor's going to tell you what the law is, and it's
22 your obligation to follow the law and render a decision.

23 And you're going to hear that the law requires
24 companies like Avant to make and keep records of how many hours
25 their employees work and the amount they're paid. And if you

1 find it that my clients were employees and the Defendants
2 didn't keep adequate records for my clients, then my clients
3 are entitled to estimate the hours that they worked because
4 you're going to hear that there were no time records. They
5 didn't care because they weren't paying overtime. What did
6 they care? My clients were making them money.

7 So you're going to hear that it's going to be your
8 responsibility to decide whether my clients are entitled to
9 overtime, and you're going to hear about the six factors.
10 You're going hear about how overtime is different than the
11 right to silence. You can't waive or contract away your right
12 to overtime. Overtime has to be paid. It doesn't matter if
13 you sign a contract. You have an agreement. You can't get
14 around the law. And overtime is the law for employees.

15 And so this isn't like a right to silence where you
16 can waive it or sign it away. If you work overtime and you're
17 entitled to get paid it, it doesn't matter if you agree with
18 your employer it could be less. You're not going to hear that.

19 You're going to hear, Oh, they wanted -- that your
20 clients were independent contractors, that they filed 1099s and
21 they filed as independent contractors. The case is going to
22 show that the Defendants issued the 1099s and that based on the
23 documents that the Defendants issued, my clients filed their
24 taxes based on the documents. And if they would've issued
25 W-2s -- like we believe the evidence is going to show they

1 should have -- my clients would have filed as employees.

2 Wouldn't have any problem with it.

3 And in making this decision whether my clients were
4 employees, you're going to hear about the economic realities
5 and how your focus should be on whether and how my clients
6 depended on the Defendants for their income, whether my clients
7 who walked in and out at the Avant office sat at their desk,
8 used their computers, logged into their software and serviced
9 their leads were in business for themselves because that's
10 really what you're going to hear the test is.

11 The Court is going to instruct you that you can
12 consider that the Defendants paid my clients by commission in
13 direct deposit and that -- how these factors play in deciding
14 whether my clients should've been classified as paid employees,
15 and if so, whether they worked and should've gotten paid
16 overtime.

17 And as far as the commissions and the bonuses, you can
18 ask yourselves, you know, what's the motivation for not paying
19 that money. Where did that money really go? Should it have
20 gone to my clients?

21 Should they have gotten the commissions that they are
22 going to tell you that they earned by signing up all of these
23 different insureds and passing them along to the customer
24 service center after which it went behind a curtain and they
25 don't know what happened, or are you going to believe the

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1 Defendants? Mr. Cortes, his name is on every insurance policy
2 that's written and performed the accounting behind the curtain.

3 So at the end of the case, there is going to be a
4 closing argument and then there is going to be a verdict form.
5 All we're going to ask for you to do is keep an open mind,
6 okay. You haven't made your minds up. Keep an open mind,
7 consider the evidence, but most importantly, use your common
8 sense in making and in forming your opinion throughout the
9 case.

10 Don't form it until the end of the case once you hear
11 all the evidence. I am not afraid of any of it. We want you
12 to hear it all. We don't want the case to end early. We don't
13 want you to make your minds up early. We want you to hear
14 everything. We want you to wait for the jury instructions and
15 then make up your minds.

16 Thank you for your attention. Thank you for taking
17 time out of your lives for the next couple days, for listening
18 to us, for bearing with us and for the decision that you'll
19 ultimately render.

20 THE COURT: Defense counsel.

21 OPENING STATEMENT ON BEHALF OF THE DEFENDANTS

22 (Pause in proceedings.)

23 MR. TROPP: Ladies and gentlemen of the jury, truly,
24 it's an honor for me to be here today in this courtroom. It's
25 really a big deal. The whole jury system is -- let me turn my

1 mic on. It's, you know, fundamental. It's what makes -- keeps
2 us to be free, you know, to have a jury decide these issues.

3 And what I find most interesting is although I know
4 the Judge is an expert in wage and hour law, as is
5 Mr. Pollock -- but ultimately you decide. You're going to be
6 the decision-makers. I find that to be very interesting. And
7 it's not like you can have a jury from outside of Miami. It
8 has to be a Miami jury because you know how Miami works.
9 You're in that best situation.

10 You know the difference between a W-2 employee, an
11 employee who has to show up 9 to 5, half an hour for lunch like
12 a school teacher or a bus driver or -- you know the difference
13 between an independent contractor or a salary-based job.
14 You've been here most of your lives, most of you, and you know
15 how the system works.

16 And the last thing I want to do is distract you. I'm
17 going to try to keep you from being distracted. And one thing
18 about the truth, the truth always stays the same. It doesn't
19 change. You're going to see changes. You're going to see
20 things that are going to -- that they're going to say that they
21 said that they're going to show that they're not going to show.
22 So truth is constant and truth, I believe, is simple.

23 And I want to -- the whole idea is I want to make this
24 simple for you. This is not an FLSA wage and hour case. It's
25 not. So that's going to be -- one of the first questions in

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1 your verdict form is: Are they employees under the FLSA as
2 defined as the FLSA?

3 They were not. They were independent contractors.
4 They were not employees. This isn't a typical salary job.
5 This was a retail sales job. There's licensed insurance sales
6 agents. Their job was not to be an insurance agent. Their
7 jobs were to be insurance sales. And they basically -- part of
8 their licenses is not only the State of Florida but they have
9 to be licensed with the CMS. In other words, like the
10 Obamacare enrollment.

11 And that's -- that's a -- that's a -- during open
12 enrollment and that's when they're claiming there was overtime
13 worked, during the open enrollment 13-week period. Which what
14 I find mind-boggling is in that 13 weeks that they're claiming
15 there should have been overtime, Carlos, his, like, first three
16 months made \$21,000, over \$21,000, averaging about, like, 2300
17 a month. That's not a minimum wage job. This is not a minimum
18 wage case. Making 25 -- almost 3,000 a week.

19 Delio made 6,000 in his second month, 1500 in his
20 first month and \$21,000 his third month. \$30,000 in three
21 months during the open enrollment period. Mariana made \$27,000
22 in that opening enrollment period. \$27,000. And Rafaela made
23 approximately like \$42,000. She averaged about \$3,337 a week.
24 It's not a minimum wage -- it's not a wage and hour case. It's
25 not an hourly case. They got hired from the first day they

1 came in.

2 And Reinier and his wife started this company from
3 ground up, brought these people in, taught them how to make
4 money, told them, You can make a lot of money. You've just got
5 to sell. And the more they sold, the more money they made.
6 Every person that they sold to, they got a percentage. More
7 people they sell, they got a bonus.

8 The whole idea was to incentivize them to make them
9 want to make money. The more money they made, the more money
10 the company makes. That's how a retail establishment works.
11 It's not a wage and hour case.

12 And then they're saying -- they said that the
13 recordkeeping was not good. First of all, under the law, an
14 employer does not have to keep any records for independent
15 contractors. You're going to hear also testimony that they set
16 up their own LLCs. They set up their own companies. Which
17 they filed tax forms, tax records, tax returns saying that
18 they're self-employed, working for these other companies, their
19 own companies, not W-2s. They wanted that. They asked for
20 that.

21 And that's -- and that's how they knew -- they knew
22 from day one that's how this works. You sell more; you get
23 paid more. If you don't want to show up to work, you don't
24 have to show up to work. If you don't want to work two hours,
25 you didn't have to work two hours. They were allowed to work

1 from home if they wanted to when all they had to do was ask.

2 And they're going to make a big deal about this
3 calendar thing, this calendar done by the agents. I don't know
4 if they considered -- like, we think that's our best evidence,
5 the calendar workweek that they put together, because it shows
6 that they only had to work like 30 hours a week. It says 9 to
7 3. They didn't work on Saturdays and Sundays.

8 You're going to see in those calendars that Delio,
9 like, would take three days off in the week or not come in at
10 all. It's up to them. That's how retail works. If you don't
11 want to show up, you don't show up. If you don't want to work,
12 you don't work.

13 But they wanted to work during open enrollment.
14 That's like a florist during Valentines. That's their day of
15 making the most money. That's their -- we shouldn't have paid
16 overtime for that 13-week enrollment period. No.

17 If Avant was -- if they said, We're going to keep the
18 place open 24 hours, these Plaintiffs probably would've been
19 there 24 hours because that's their opportunity to make money.
20 And that's one of the essential parts of the independent
21 contractor factors that we're going to go through -- is their
22 opportunity for profit or loss.

23 What does that mean? Some people are stuck in a
24 dead-end job and they have no opportunities to go up and down.
25 Some people have minimum wage jobs and they could be there for

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1 ten years and they're not going to go anywhere. That makes
2 somebody an employee. But they had the profit and loss
3 opportunity. That's the biggest factor in why they're
4 independent contractors. The time -- they decided when they
5 worked. They decided how long they wanted to work.

6 Now, I wasn't even going to bring it up. I wasn't
7 going to make a big deal about it. But the fact is: While
8 they worked for Avant, they were allowed to bring in their cell
9 phones. They had access to all the recordkeeping equipment.
10 They could see what they were making, what was owed to them,
11 how many -- what was going on. Never once -- not once while
12 they were working for Avant did they say, Hey, I'm owed a
13 dollar. Hey, I'm owed overtime. I'm owed a bonus. I'm owed a
14 commission. Not once the whole time.

15 And then, just so you know, although it may look like
16 that you've got a bunch of employees and they must have done
17 something wrong, all these people here, like, in unison --
18 you've got Carlos and Mariana who are brothers and sisters who
19 basically took pictures and, like, started their own companies
20 mirroring the same thing that they were doing.

21 MR. POLLOCK: Objection, Your Honor. This goes
22 outside the scope.

23 MR. TROPP: He brought it up, Judge.

24 MR. POLLOCK: It's also argumentative.

25 THE COURT: It is argumentative. Just focus on what

1 the testimony and the evidence will show, please.

2 MR. TROPP: Okay.

3 The evidence will show that this whole wage and hour
4 thing came to fruition and mentioned for the first time -- the
5 first time it ever came up was the day this lawsuit started and
6 that before this lawsuit started, Avant sent a cease and desist
7 letter -- a letter to Mariana and Carlos to stop taking
8 their -- stop doing what they were doing with the infringement
9 on the company, you know, the privileges and secrets and
10 what -- what they did.

11 And then in response to that, in response to the cease
12 and desist, basically, you know, on the grounds of this, on
13 this infringement of the company's rights and trade secrets and
14 all that stuff, basically taking -- basically recopying the
15 company, they responded in unison -- they said, Oh, it's a wage
16 and hour case. It's a commission and bonus case.

17 It's very important that in this lawsuit there are
18 three counts. The first count is under FLSA, wage and hour.
19 They say they were paid -- should've been paid overtime.
20 You're going to see that's really a small part of what they're
21 saying they're owed. Count 2 and Count 3 are contracts based
22 on contract and unjust enrichment. You can't recover on both.
23 They're basically saying, You didn't pay us what you agreed to
24 pay us.

25 We're going to show you that they got everything that

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1 they were entitled to. They made a lot of money. And
2 instead -- you could ultimately -- when you look at the facts,
3 you can determine, Okay. Was there anything owed? Were there
4 commissions owed? Were there bonuses owed?

5 We're going to show you that Mariana, she admitted she
6 got her bonus. They got their commissions. They got their
7 bonus. This is a contract case. It's not a wage and hour
8 case. You're going to see that.

9 And at the end when we finish -- I am going to try to
10 get through this as fast as we can without distracting you and
11 ask you: Were they employees under the FLSA, which is meant to
12 protect people? It's meant to make sure that people get their
13 minimum wage, time and a half. It's made to, like, not -- keep
14 employers from controlling workers and taking advantage of
15 them. It's not meant to help --

16 MR. POLLOCK: Objection, Your Honor. This is all
17 argumentative.

18 THE COURT: Sustained.

19 MR. TROPP: At the end when you get the verdict form,
20 the first question is: Are the employees under the wage and
21 hour act, FLSA? You're going to check no. No.

22 MR. POLLOCK: Objection, Your Honor. This is all
23 closing argument, what you're going to check. It's not what
24 the evidence is going to show.

25 THE COURT: Overruled.

1 MR. TROPP: And also, you'll see nothing was owed.
2 Everything was paid. People here who were injured -- or most
3 injured or most hurt from this is Reinier and his wife, Andrea,
4 who tried to help these people. That's what you're going to
5 see. Thank you.

6 THE COURT: Ladies and gentlemen, if you wish, you may
7 take notes to help you remember what the witnesses say. If you
8 do take notes, please do not share them with anyone until you
9 go to the jury room to decide the case. Do not let note-taking
10 distract you from carefully listening to and observing the
11 witnesses.

12 When you leave the courtroom, you should leave your
13 notes hidden from view in the jury room. The court security
14 officer should be passing out notebooks and pens or pencils, as
15 I speak, shortly.

16 Whether or not you take notes, you should rely on your
17 own memory of the testimony. Your notes are there only to help
18 your memory. They are not entitled to greater weight than your
19 memory or impression about the testimony.

20 We'll be breaking for lunch at 12:30, so let's
21 continue, please. First witness.

22 MR. POLLOCK: The Plaintiffs call Reinier Cortes, the
23 Defendant.

24 THE COURT: Mr. Cortes, please approach.

25 Raise your right hand.

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(Time 11:21 a.m.)

REINIER CORTES,

a witness for the Plaintiffs, testified as follows:

THE WITNESS: I do.

THE COURT: Please be seated.

DIRECT EXAMINATION

BY MR. POLLOCK:

Q. Afternoon, Mr. Cortes.

A. Hello.

Q. What's your full name?

A. Say again.

Q. What is your full name?

A. Reinier Cortes Flores.

Q. And you're married to the other individually-named Defendant in this case, Andrea Gonzalez Quintero; is that right?

A. Correct.

Q. Now, Avant is your company, is it not?

A. I'm sorry. What was the question?

Q. Avant is your company?

A. Yes. I'm the CEO.

Q. You're also the president?

A. Yes.

Q. And your wife is the vice president; is that also true?

A. Correct.

1 Q. And she works with you in the business?

2 A. Correct.

3 Q. And she's always worked with you at Avant since it opened
4 in 2020; is that correct?

5 A. Not since it was formed.

6 Q. Okay. Not since it was formed?

7 A. Correct.

8 Q. But she's worked with you since 2020 in the business,
9 right?

10 A. I don't recall if it was since 2020 because she had a job
11 at the time, a full-time job.

12 Q. Avant is a health insurance agency, right?

13 A. It's a health insurance agency.

14 Q. As a health insurance agency, it sells health insurance or
15 markets health insurance to people who don't get health
16 insurance from their employer, right?

17 A. Can you repeat the question? It was a long question.

18 Q. Sure. Your company markets health insurance to people who
19 don't get health insurance from their employers?

20 A. Not only that they don't get insurance from their
21 employers; that they don't have health insurance regardless if
22 it's from their employers or not.

23 Q. Okay. And then as far as Avant's business, it has to be
24 licensed to sell insurance in the State of Florida; is that
25 true?

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1 A. Correct.

2 Q. And it also has to be licensed in other states in order to
3 sell insurance in, let's say, Illinois or Texas, correct?

4 A. Correct.

5 Q. And you were the one who applied for the licenses that
6 allowed Avant to sell the health insurance --

7 THE COURT REPORTER: I'm sorry. The question a little
8 slower, please.

9 BY MR. POLLOCK:

10 Q. You were the one who applied for the licenses that allow
11 Avant to sell health insurance in Florida, Illinois and Texas;
12 is that correct?

13 A. Yes.

14 Q. As far as hiring agents, you're the one who did that; is
15 that right?

16 A. What's the question?

17 Q. Hiring agents. You're the one who hired the health
18 insurance agents at Avant?

19 A. At the beginning, yes.

20 Q. Okay. At the beginning, meaning until --

21 A. From when I formed the company.

22 Q. From when you formed the company until at least -- what? --
23 July or August of 2022?

24 A. I do not recall until what time I was personally involved.

25 Q. I don't know if we got that answer.

1 A. So I do not recall until what time I was personally the one
2 hiring agents directly.

3 Q. In 2020, you're the one who hired the agents, correct?

4 A. Correct.

5 Q. In 2021, you're the one who hired the agents, correct?

6 A. Correct.

7 Q. And, in fact, you're the one who hired each of my
8 clients -- Delio, Carlos, Mariana and Rafaela, right?

9 A. Yes.

10 Q. All right. As far as recruiting other insurance agents for
11 the business, you were the one who would've posted any
12 advertisements to solicit people to come in and work for your
13 company, right?

14 A. What's the question?

15 Q. Sure. You're the one who posted the advertisements to
16 recruit insurance agents for the business; is that correct?

17 A. I believe in the beginning everything was word of mouth,
18 referrals, people that I've been knowing for years, and then I
19 may have posted something on Craigslist, probably.

20 Q. As far as the pay structure at Avant, you're the one who
21 decided how agents would be paid; is that right?

22 A. Could you please repeat the question?

23 Q. Sure. You're the one who decided how agents at Avant would
24 be paid?

25 A. Not necessarily.

1 Q. Well --

2 A. It was a mutual agreement between the agents and the
3 company.

4 Q. It was an agreement between the agents and yourself, right?

5 A. And the company, correct.

6 Q. What do you mean "and the company"?

7 A. Say again.

8 Q. You said it was also "and the company." What company are
9 you referring to?

10 A. Avant Assurance.

11 Q. All right. And did my clients agree with anybody else at
12 Avant other than you on how they would be paid?

13 A. No. Just with me.

14 Q. Okay. That's what I thought. Okay.

15 Now, as far as the different insurances that Avant was
16 authorized to sell, that would include Oscar, Cigna,
17 UnitedHealthcare, Ambetter and others for about eight or ten
18 companies in total?

19 A. Yes, around that.

20 Q. And when you open up an insurance agency, can you just
21 start selling insurance for anybody, for any company, or is
22 there a process that you have to go through?

23 A. Well, you would need to have a contract if you want to get
24 compensated for it.

25 Q. So do you need to be appointed to these different insurance

1 companies in order to sell for them?

2 A. What's the question?

3 Q. Do you need to be appointed to the different insurance
4 companies to sell for them?

5 A. So I don't know the legality of appointed. I know that if
6 you want to get paid, you need to have a contract with the
7 insurance company.

8 Q. Okay. And so each of the insurance companies that we just
9 talked about for the eight or ten in total, were you the one
10 who applied to get the contracts with these different
11 companies?

12 A. If I am the one that apply to the contract for the
13 companies, yes.

14 Q. And as far as -- is there an appointment process for you to
15 be appointed to be able to sell insurance for these companies?

16 A. What's the question?

17 Q. An appointment process.

18 A. I don't understand appointment, what you're referring by.

19 Q. Okay. Do you remember giving a deposition in this case?

20 A. Say again.

21 Q. Do you remember giving a deposition in this case?

22 A. Yes.

23 Q. And you gave the deposition by Zoom on April 11th of 2023
24 with my associate Mr. Cummings, who is the one that took your
25 deposition. Do you remember going through that exercise?

1 A. Yes.

2 Q. And do you remember being asked a series of questions in
3 that deposition? Right?

4 A. Yeah.

5 Q. And do you remember being asked these questions and giving
6 the following response, Page 8 of your deposition: Okay.

7 Understood. All right. And do you understand that the court
8 reporter just swore you in under oath to tell the truth? Your
9 answer was correct. And you said all right.

10 So we're not in a courtroom setting, obviously. We're over
11 Zoom and I'm in my office and I'm assuming you are wherever you
12 are in your office. But because you're sworn under oath to
13 tell the truth, even though we're not in a courtroom setting, I
14 want to remind you that you always have to tell the truth no
15 matter what the question is. That's whether you don't remember
16 or you do remember, understood? And you answered correct.

17 That was your answer back then, right?

18 A. Yeah. If that's what you have, that would be the answer.

19 Q. Okay. And then Mr. Cummings actually asked you about the
20 appointment process at Page 13. Okay. I may not remember all
21 the insurance companies, but how many insurance companies is
22 Avant appointed with? And you said eight or ten.

23 And then the question was: How does Avant Assurance become
24 appointed with an insurance company? So what's the process?
25 So you have to send an inquiry to each of the companies and

1 basically present a business plan. And if they accept it, they
2 issue a contract.

3 Was that your answer back then?

4 A. Yes. Basically, you submit a business plan and then they
5 will issue a contract if your business plan is favorable to
6 them.

7 Q. Okay. So the answer is correct, what you gave then?

8 A. Yes.

9 Q. And you understand the appointment process, what I'm
10 talking about? Is that a yes or no? You understand what the
11 process is? Yes or no.

12 A. Can I ask a question?

13 Q. No. You can't ask me a question. But you can go ahead and
14 answer me yes or no whether you know what the appointment
15 process is that we were talking about.

16 A. I don't understand the difference between appointment and
17 contract, if that's what you want to hear from me.

18 Q. Now, Avant sold Obamacare insurance during the open
19 enrollment period; is that right?

20 A. Right.

21 Q. And the open enrollment period runs from November 1 to the
22 end of January of each year; is that right?

23 A. Yes. At the beginning, it could have been just November
24 and December, but the law changed and they made an extension
25 through January.

1 Q. And the law changed as far as my clients are concerned when
2 they worked from the 2020 enrollment period, which went from
3 November 2020 to January of 2021, and then the '21 to '22
4 enrollment period. That enrollment period was more than the
5 two months. That was from November 1st to the end of January
6 for those couple years, right?

7 A. What was the question?

8 Q. The question was: The open enrollment period that my
9 clients worked, right, we're talking about the time period from
10 November of 2020 through the end of January of 2022, right?

11 A. What is the question? I don't understand the question.

12 Q. I'm asking if that's the open enrollment period that they
13 worked that we're talking about in this case.

14 A. So they worked from November 1st through January 1st. Is
15 that your question?

16 Q. Yes.

17 A. Okay. Yeah.

18 Q. Okay. Because you mentioned that there were other
19 enrollment periods in the past that ended in December, but
20 we're not talking about those.

21 A. 2020 was one of those open enrollments. That is what I am
22 referring about that.

23 Q. And open enrollment's the time when people who don't have
24 health insurance from their employer get to choose their health
25 insurance plan for the next year?

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1 THE COURT REPORTER: I'm sorry. The question again.

2 BY MR. POLLOCK:

3 Q. Open inrollment is the time when people who don't have
4 health insurance from their -- get to choose their health
5 insurance plan for the next year or try to renew their plan for
6 the next year, right? That's what open enrollment is?

7 You gave a deposition without an interpreter, did you not?

8 A. Yes. I speak fluent English.

9 Q. Okay.

10 A. If I don't understand your question, I have to ask you.

11 Q. Understood. And I want you to continue to do that.

12 A. Don't get mad at me for that.

13 Q. Nobody's mad.

14 I'm just asking you if open enrollment is the time when
15 people who don't have insurance or looking to renew their
16 insurance other than as provided by their employer go ahead and
17 go on the Marketplace to find insurance. Yes or no?

18 MR. TROPP: Objection, compound.

19 THE WITNESS: I don't understand the question.

20 THE COURT: Overruled.

21 BY MR. POLLOCK:

22 Q. All right. You don't understand the question?

23 A. No.

24 Q. Okay. Do you know what the open enrollment period is?

25 A. Yes.

1 Q. Is the open enrollment period a time when people can go
2 ahead and select their health insurance plan when their
3 employer doesn't give them insurance?

4 A. It's not necessarily when the employer doesn't give them
5 insurance.

6 Q. Okay.

7 A. If that's what you're asking. I'm not sure.

8 Q. Well, can you get a health insurance plan on the
9 Marketplace if you've already got insurance from your employer?

10 A. There are certain qualifications that even though your
11 employer might offer insurance but you can still apply for the
12 ACA, which is the Obamacare. That's why I wanted to make that
13 clear that it's not necessarily that it's not offered by the
14 employer.

15 Q. Most of the people who go through the open enrollment
16 process don't have insurance from their employer; is that
17 right?

18 A. I don't know that.

19 Q. Well, most of the policies that you sold through your
20 company were not the people who already had insurance based on
21 the plans that they were getting, right?

22 A. They didn't have insurance.

23 Q. Okay. And that was most of the people did not have
24 insurance already, right?

25 A. Say again.

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1 Q. Most of the people who got insurance from Avant did not
2 already have insurance in place for their health?

3 A. Correct. But the open enrollment also is a period where if
4 you have insurance, that's your opportunity to switch plans as
5 well. So it could have been that they had insurance.

6 Q. Sure. They could've had insurance and now it's the time
7 when the amount of their insurance is going to change or the
8 benefits for their health insurance is going to change. And so
9 that's when they go to your company and they call your company
10 and you offer them different plans, right?

11 A. (No audible response.)

12 Q. And so for a health insurance agency like yours at Avant,
13 it's a very busy time. Would you agree?

14 A. Yeah.

15 Q. I mean, you think of a feeding frenzy. This is -- for a
16 health insurance agency, this is the time where you can make
17 the most money in the shortest amount of time, right?

18 A. Correct.

19 Q. And when you started your company in 2020, that 2020 to
20 2021 open enrollment period was the first one that your company
21 had worked through, right?

22 A. Correct.

23 Q. So your company -- you also have a -- is doing business as
24 a fictitious name, the Obamacare Insurance Center; is that
25 right?

1 A. Yes.

2 Q. And that's the name that you registered with the State of
3 Florida?

4 A. Correct. That's the DBA.

5 Q. And as far as an office, your company has an office, does
6 it not?

7 A. Correct.

8 Q. Its first office was in Kendall?

9 A. In Kendall, yes.

10 Q. And you had that office until, let's say, May, June of
11 2022?

12 A. Until last year, yeah.

13 Q. Until May or June of 2022 it was, right?

14 A. May 2022, yeah.

15 Q. And then you moved to the bigger office in Doral?

16 A. Correct.

17 Q. And when you moved to the bigger office in Doral, agents
18 had to have parking cards to go in and out of the parking
19 garage?

20 A. Yes. Like in most of the buildings, they have a parking
21 garage. You need a key card to go in and out.

22 Q. And so for anybody who wanted to work at Avant in 2020,
23 2021 and into 2022, that would be your decision, right?

24 A. Correct.

25 Q. Now, to work at Avant, an agent -- you said it would first

1 be word of mouth, right?

2 A. Correct.

3 Q. And so an agent -- let's say Rafaela. Rafaela would come
4 and talk to you over the phone or meet with you in person?

5 A. Yes. She was referred to us through a friend, a mutual
6 friend that we both share, because she wasn't making enough
7 money with them as an independent agent and she would make more
8 money with us. So she was referred to us by them.

9 Q. And so you hired Rafaela. She was the first one you hired,
10 right?

11 A. She was what?

12 Q. She was the first of my clients whom you hired?

13 A. No. I think it was Delio.

14 Q. It was Delio first?

15 A. Yes.

16 Q. You talked to Delio about getting his license and then
17 Delio came and worked for you?

18 A. Correct. Yeah, he didn't have a job at the time. He is
19 also married to my mom, so obviously I wanted to help him.

20 Q. So was Delio one of the first agents that started working
21 for you?

22 A. Say that again.

23 Q. Was Delio one of the first agents who started working for
24 you?

25 A. Delio, yes.

1 Q. So in insurance, you don't get paid right away at the
2 company, right?

3 A. What's the question?

4 Q. Sure. In the insurance business, you don't get paid the
5 day that you sign up a new member?

6 A. Correct.

7 Q. So you have expenses that you're paying until you get money
8 from the insurance company; is that correct?

9 A. Correct.

10 Q. So when you hire somebody who is going to be an insurance
11 agent, you can't just hire Delio without making sure that he's
12 first licensed to sell insurance; is that correct?

13 A. That is correct.

14 Q. And so Delio has to be a licensed insurance agent in each
15 state where he's supposed to sell insurance?

16 A. Correct.

17 Q. And so before somebody comes to work for you, you make sure
18 that they are a licensed health insurance agent; is that true?

19 A. Correct.

20 Q. And then because Delio has to be licensed, your
21 understanding is that when you hire Delio, Delio's going to do
22 the work, right? He's going to be the one who's going to be
23 the agent?

24 A. What's the question?

25 Q. When you hired Delio as an insurance agent, what you're

1 expecting is for Delio to do the work, correct?

2 A. I don't understand your question.

3 Q. Sure. Delio sitting on the left with the goatee and the
4 black zip-up -- right? That's Delio?

5 A. Yes.

6 Q. Okay. And when you hired Delio to work at Avant, what you
7 were looking for was for Delio to do the work at Avant; is that
8 right?

9 A. To produce, yeah. To solicit business.

10 Q. He would be the one producing for you?

11 A. Correct.

12 Q. Okay. So it's not like you expected Delio, when you hired
13 him, to go out and then have four other people who you don't
14 know do the work for him, right? That's not what you
15 understood was going to go on?

16 A. He wasn't prevented from bringing help.

17 Q. He could bring help, but he couldn't have anybody else sell
18 for him because he was a licensed insurance agent whom you
19 hired, correct?

20 A. Yes.

21 Q. Okay. And so you hired Delio. Then you hired Rafaela?

22 A. Probably in that order, yeah.

23 Q. And then was it Carlos or Mariana who was next?

24 A. Mariana and then Carlos.

25 Q. And then you hired how many other agents working for you?

1 A. We had more. There were another three, four agents at the
2 same time.

3 Q. Okay. So you had seven or eight agents at the same time?

4 A. Say again.

5 Q. You had about seven or eight agents working for you?

6 A. It could have been around that number.

7 Q. And to work for you, every insurance agent at Avant you
8 classified and you paid as an independent contractor until
9 when? About November of 2022?

10 A. What was the question?

11 Q. Sure. Every insurance agent that worked at Avant you
12 classified and paid as an independent contractor until November
13 of 2022; is that correct?

14 A. No. That's incorrect.

15 Q. Okay. So you had insurance agents who were employees
16 before then?

17 A. Correct.

18 Q. How many?

19 A. I don't recall. But we did have employees and independent
20 contractors, both, insurance agents.

21 Q. But you didn't have any before we filed the lawsuit, did
22 you?

23 A. Come again.

24 Q. You didn't have any insurance agents who were employees
25 before we filed this lawsuit in August of 2022, did you?

1 A. Probably, yes.

2 Q. Probably?

3 A. Yes.

4 Q. Well, you had no way of tracking the time that people
5 entered work and left work each day at Avant, did you?

6 A. No. Correct.

7 Q. So even though you say you had employees, you weren't
8 keeping track of their time?

9 A. They were salaried employees.

10 Q. They were salaried employees. So you had insurance agents
11 who were salaried?

12 A. Yes.

13 Q. And you didn't care how much they worked because they were
14 on salary, right?

15 A. Not necessarily.

16 Q. Well, which is it? You didn't keep track of the time
17 because you didn't have them clock in and out.

18 A. They had a schedule and they knew what time they had to be
19 at the office, the employees.

20 Q. They knew when they had to be at the office, but, I mean,
21 for you, you didn't care because they were on salary, right?

22 A. No. I did care. Don't put words in my mouth, please.

23 Q. Okay. You cared.

24 So you made sure -- so how many people were getting paid
25 overtime as independent contractors? None, right?

1 A. What's your question?

2 Q. Independent contractors didn't get overtime, did they?

3 A. I wasn't tracking their time, so I wouldn't know if they
4 worked 40 hours, 30 hours or 20 hours.

5 Q. And you didn't care how many hours the independent
6 contractors worked because you weren't paying them wages; you
7 were paying them as independent contractors?

8 A. Commissions.

9 Q. And as far as you understand it, because you paid them
10 commissions, you didn't have to pay them as employees?

11 A. What's the question?

12 Q. Because you paid them commissions, you didn't have to pay
13 them as employees?

14 A. No. That's not the reason.

15 Q. Okay.

16 A. You want to ask me a question?

17 Q. Well, for my clients -- well, let me ask you this: In
18 November of 2022, right, so a couple months after we filed this
19 lawsuit, you decided to pay all of your insurance agents as
20 employees, right?

21 A. Correct. Not all. Let me clarify that. We still have
22 independent contractors insurance agents at this time.

23 Q. But the majority of your insurance agents are employees?

24 A. Not necessarily.

25 Q. Since November?

1 A. Correct.

2 MR. TROPP: Your Honor, I'd just like to object on
3 grounds of relevance.

4 THE COURT: Overruled.

5 BY MR. POLLOCK:

6 Q. And so let's talk about these insurance agents, what they
7 do and -- so for the insurance agents, do you agree that you
8 provided, and Avant provided, everything they need to do their
9 work?

10 A. For the insurance agents?

11 Q. Yes.

12 A. During what time frame?

13 Q. While my clients worked there.

14 A. Say again.

15 Q. While my clients worked there.

16 A. We had computers and they had the use of that.

17 Q. My question was: Did you provide everything they needed to
18 do their work?

19 A. I don't know if they had everything they needed to do their
20 work, but we had computers available for them.

21 Q. Okay. Well, you had an office?

22 A. We had an office, yeah.

23 Q. You had a desk?

24 A. Correct.

25 Q. You had computers?

1 A. Correct.

2 Q. You had computer monitors?

3 A. Correct. Some of them even brought their own laptops.

4 Q. And if they didn't, you provided those computers?

5 A. Say again.

6 Q. If they didn't provide their own laptops, then you provided
7 your own -- you provided a computer for them?

8 A. We had computers available, yes.

9 Q. We talked about the monitors.

10 You provided computer software, did you not?

11 A. Yes. CRM.

12 Q. I'll go through that in second.

13 Besides the CRM, you had an electronic signature program
14 Blueink?

15 A. That was available and they were free to use it or not at
16 their discretion.

17 Q. And you paid for these subscriptions for these softwares?

18 A. I'm sorry?

19 Q. You paid for the subscriptions for these softwares?

20 A. Yes.

21 Q. The office, the air conditioning, lights, water, all
22 provided by Avant, right?

23 A. Yeah. And coffee as well.

24 Q. And the phone system, it went through the computer. It was
25 a Softphone system. But that was also something that Avant

1 provided?

2 A. It was available, yes. It was there.

3 Q. I mean, that's how calls came through when they were
4 sitting at the office -- was through the phone system that
5 Avant provided, correct?

6 A. Yes. When you got to work, you log into the work platform.
7 You get your calls from the work platform. We had a similar
8 platform for insurance.

9 Q. Okay. Except Uber doesn't provide the cars, right?

10 A. Say that again.

11 THE COURT REPORTER: I'm sorry. What was the question
12 again?

13 BY MR. POLLOCK:

14 Q. Uber doesn't provide the cars, do they?

15 A. I believe they have a program where you can lease a car or
16 buy a car from them.

17 Q. You believe?

18 A. I've been an Uber driver myself.

19 Q. Okay. And when you were an Uber --

20 A. I don't know if it's changed or not. And that's my belief
21 from my experience as an Uber driver.

22 Q. And when you were an Uber driver, you provided your own
23 vehicle, didn't you?

24 A. I didn't need to use one from Uber, so I provided my own
25 vehicle, yes.

1 Q. So what Uber provided only was the software, right?

2 A. Say again.

3 Q. They provided the software?

4 A. The software, yes.

5 Q. You did the marketing at Avant to bring in the leads?

6 A. Correct. They also did their own marketing and they also
7 brought their own referrals. Not a whole lot, but they did
8 some of that too.

9 Q. You provided all the leads, did you not?

10 A. Not all the leads, like I said before. They also provided
11 their own leads, their own personal clients.

12 Q. You provided the insurance products that they were going to
13 sell because the company was contracted with the different
14 insurance companies, correct? You provided parking at the
15 office?

16 A. Parking was for any visitor, tenants or not.

17 THE COURT REPORTER: I'm sorry. Any visitor, what was
18 the word --

19 THE WITNESS: Or tenants.

20 BY MR. POLLOCK:

21 Q. But for my clients working and the other agents working at
22 Avant, they received parking, including the parking garage at
23 the office, right?

24 A. Yeah.

25 Q. And they got a parking card for that?

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1 A. Yes.

2 Q. Some people, like Delio, brought their own headsets, but
3 some people would use the headsets that Avant provided; is that
4 not true?

5 A. No.

6 Q. Avant didn't provide headsets?

7 A. We had headsets available, but not all of them were using
8 the headset.

9 Q. And then there was also the processing center that you had;
10 is that right?

11 A. Customer service team, yes.

12 Q. And so you had a couple different teams at the front end
13 and the back end of every insurance transaction, did you not?

14 A. Yes.

15 Q. You have another company in Colombia, Avant Assurance SAS?

16 A. That's true, yes.

17 Q. And what Avant Assurance SAS does is they receive inbound
18 leads, so people call Avant SAS. Do they also do outbound
19 calling?

20 A. Say again.

21 Q. Does Avant SAS in Colombia also call customers?

22 A. Well, I'm not authorized to speak on behalf of that
23 company.

24 Q. Why not? Aren't you the president of that company?

25 A. It's not relevant to this matter, to this case.

1 Q. If there is an objection, your lawyer will provide that to
2 you.

3 So you're the representante legal, I think you said --

4 MR. TROPP: Your Honor, objection, relevance. It's
5 outside the scope.

6 THE COURT: Overruled.

7 BY MR. POLLOCK:

8 Q. So we're the -- so for Avant Assurance SAS, that company,
9 does it make calls to people who want insurance or does it only
10 receive calls?

11 A. It could be both.

12 Q. Okay. So what Avant Assurance SAS does is it tries to get
13 as many leads as possible; is that correct?

14 A. They're a marketing company, yes.

15 Q. They're a marketing company for insurance. And then what
16 they do is they take those calls once they have somebody on the
17 line and they transfer those calls to your company here, Avant,
18 first in Kendall and then in Doral, right?

19 A. It was over the phone regardless of the location.

20 Q. Yeah, it was over the phone.

21 So what you would do is you would use Avant Assurance SAS
22 in Colombia to try to aggregate all these leads and then you
23 would provide all the customers or all the leads to the agents
24 who were at Avant here in Miami, right?

25 A. Correct.

1 MR. POLLOCK: Can I get the ELMO for a second, please?

2 THE COURT REPORTER: It's on the ELMO.

3 MR. POLLOCK: I'm sorry. The HDMI.

4 BY MR. POLLOCK:

5 Q. And so these are all the things that your company -- that
6 we talked about that the company provided.

7 And then you also talked about the CRM software, right?

8 That's Radiusbob? Yes?

9 A. Correct.

10 Q. And so Radiusbob, we have it up on the screen. It's just a
11 screenshot of it.

12 That's a piece of software that's available for anybody to
13 purchase or license; is that true? Anybody can buy it?

14 A. Yeah. Anybody can purchase a license.

15 Q. And so what then happens is as you purchase the license,
16 then that software, you have to customize it for your business,
17 don't you?

18 A. Some of it.

19 Q. So all the customization that was done for your business,
20 that was done by or for your company so that Radiusbob would
21 work with the insurance industry?

22 A. Correct.

23 Q. And then you have to input all the information for the
24 different insurance agents but also for the different insurance
25 companies and then all the different plans from each of the

1 insurance companies. You can have all that information in the
2 software, right?

3 A. Yes.

4 Q. Besides all that, then you have to import all the data for
5 all the leads that would come through. So every person's name
6 and personal information would also have to go into Radiusbob,
7 right?

8 A. Correct.

9 Q. And so in order to use Radiusbob, right, when you come in
10 to start working for Avant, somebody has to show you how to use
11 that software because this has been customized for your
12 company; isn't that right?

13 A. No. They have their own YouTube videos as well, like
14 tutorials.

15 Q. And besides the tutorials, it would be either you or your
16 wife who would show my clients how to use the Radiusbob
17 software?

18 A. Yes. Simple training.

19 Q. And then how to go ahead and answer a phone call
20 because phone calls didn't come to a hand phone. There wasn't
21 one. It would be a headset that you plugged into the computer.

22 So you would have to know how, when a call would come in,
23 to click to answer it on the computer, right?

24 A. Correct.

25 Q. So in order to work for you, isn't it true that all my

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1 clients needed to bring with them to do their work was their
2 voice, their computer skills and be able to type?

3 A. Not necessarily.

4 Q. In your deposition in which you swore to tell the truth,
5 the same truth as if you would be in the courtroom today,
6 Mr. Cummings asked you the following question and you gave the
7 following response: What did the agents need to bring to work
8 with them every day to do their jobs? This is at Page 142 of
9 your deposition. And your answer was: Their voice, pretty
10 much, and, you know, computer skills, right. They needed to be
11 able to type. That's it.

12 Was that the question and the answer that you gave in this
13 case in your deposition on April 11th under oath?

14 A. In reference to the Plaintiffs in the case, yes.

15 Q. Now, the office that you had in Kendall, how is that set
16 up?

17 A. How?

18 Q. How is it -- when you walk into the office, what was there?

19 A. We had a desk, like nine, eight, ten.

20 Q. It was just a big, open space with desks, or were there
21 private offices as well?

22 A. I wouldn't call it a big, open space. It was a small
23 office, yeah. We had eight to ten desks in that space in an
24 open area.

25 Q. In an open area.

1 Did you have also have private offices in that space?

2 A. There were three, yeah.

3 Q. And you were in one of those private offices?

4 A. Correct.

5 Q. Your wife was in another one of the private offices?

6 A. No. She was outside some of the time.

7 Q. She was outside.

8 Who was in the other private office?

9 A. They were empty.

10 Q. And then you had the eight or nine desks?

11 A. Correct.

12 Q. And as far as all the computers that were there, you had
13 eight or nine computers? Or actually more because you had
14 yours too that --

15 A. We had less at the time as well. We didn't start with
16 eight or nine computers. We started with something else.

17 Q. You worked up to that?

18 A. Say again.

19 Q. You worked up to eight or nine computers?

20 A. Probably at the end we did have all the stations with a
21 computer, yeah.

22 Q. Sure. Because it's expensive to buy all the equipment and
23 buy all the software, and it's tough when a company starts,
24 right?

25 A. Correct.

1 Q. So you have eight or nine desks out in the area. Did they
2 all have chairs?

3 A. Yes.

4 Q. And they had computers and monitors?

5 A. Yes.

6 Q. And then who was it that went out and purchased these
7 computers? Was that you?

8 A. Who was?

9 Q. Who bought the computers?

10 A. I did.

11 Q. And did you buy them online or did you go to, like, a Best
12 Buy?

13 A. Some of them were online and some of them were at a local
14 store, like OfferUp.

15 Q. Okay. And then as far as the software, did you go ahead
16 and input all the information into Radiusbob so you could start
17 using it for your business or did you have to pay another
18 company to do that?

19 A. What's the question? If I put in what information?

20 Q. Radiusbob, that's a product that you buy a license for and
21 it's available on your web browser, right?

22 A. Correct.

23 Q. Now, when you get that product, it probably has a log-in
24 website AvantAssurance.Radiusbob.com or something?

25 A. Yeah, something like that.

1 Q. Something like that.

2 Which would pull up your company's version of Radiusbob?

3 A. Correct.

4 Q. Who was it that went ahead and customized the Radiusbob for
5 your business? Was it you or was it another company that you
6 hired?

7 A. No. Between Radiusbob and myself.

8 Q. So you went and you did all the programming that we talked
9 about to add the information with the different insurance
10 companies and the processes that -- the steps that would have
11 to be done, right?

12 A. Most of that was already built into the software.

13 Q. And you would customize that for your business?

14 A. I would just have the name of the insurance companies,
15 pretty much.

16 Q. And what about the forms; weren't there forms that you
17 could send out through Radiusbob?

18 A. Which form?

19 Q. Well, wasn't there consent forms that insurers could sign?

20 A. That was not through Radiusbob.

21 Q. Okay. That was through Blueink?

22 A. Yes, Blueink.

23 Q. So there were also -- besides Radiusbob, there were also
24 forms that your company used in its business that you
25 developed, right?

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1 A. I did create forms, yes.

2 Q. And so in order for an agent to go ahead and use their desk
3 and do whatever they needed to do, most of time they would come
4 into the office and work from there; is that right?

5 A. Yes.

6 Q. So they'd go into the office with just their computer
7 skills and their voice and they'd sit down at the desk that you
8 provided in the chair that you provided, use the keyboard and
9 mouse that you provided to log in to the computer that you
10 provided, and that's how they start their day, right?

11 A. Correct. Some of them provided their own equipment as
12 well.

13 Q. But my clients, they used your desk, your chair, your
14 keyboard, your mouse, your computer and your monitor, right?

15 A. Not all of them did.

16 Q. Who didn't?

17 A. Delio probably had some headsets. Carlos was bringing some
18 laptop. Rafaela was bringing her own mouse. And I believe
19 Mariana may have changed the keyboard and the mouse because she
20 didn't like it. So they brought their own equipment as well.

21 Q. And they bring it into your office to do their work?

22 A. Nobody brought their own chairs and their own desk.

23 Q. But they would bring whatever, a keyboard or a mouse or a
24 headset, and they'd bring it into your office to do their work?

25 A. Yeah. And they would take it home; they would leave it

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1 there.

2 Q. So they log into Radiusbob, and they'd get a screen that
3 would show, I guess, their home screen or the lead screen and
4 they would show that they are live, that they are online. And
5 once they're online, would that send a notification to Avant
6 SAS or the other people you were buying leads from to start
7 sending these leads to whoever just logged in? How does that
8 process work?

9 A. What was the question again?

10 Q. Well, there was a process. Once you logged in and you were
11 live on Radiusbob, you could start to get leads?

12 A. Correct.

13 Q. And how would any of these lead sources -- how would Avant
14 Assurance SAS know that Delio just logged in to the computer
15 and that he could take calls? How would they know?

16 A. They wouldn't know.

17 Q. Okay. So how did Delio start to get leads?

18 A. So they didn't need to send it to a specific agent. It was
19 a random pool, whoever was available was free to take that call
20 or not.

21 Q. So it goes into a pool, but how does the pool -- how does
22 somebody know that there is a call available to take?

23 A. It would ring.

24 Q. The phone would ring. So would it ring every agent who was
25 online?

1 A. Correct, yeah.

2 Q. So if you got nine people and everybody's waiting for a
3 call, all the sudden the phone call would ring at once?

4 A. Correct, regardless of their location. They could have
5 been in Europe, Miami, Kendall or Doral.

6 Q. None of my clients worked from Europe, did they?

7 A. One of them worked from Colombia.

8 Q. Right. It was a family surgery issue, right?

9 A. Yes.

10 Q. And he worked there for a short period of time and came
11 back?

12 A. Correct.

13 Q. And he asked for your permission because he needed the
14 log-ins in order work from Colombia, correct?

15 A. No. He knew his own log-in credentials. He didn't ask for
16 my permission.

17 Q. He didn't ask for permission to work in Colombia?

18 A. He did not.

19 Q. So log in, the phone starts ringing, you click a button and
20 you answer the call?

21 A. If you want to.

22 Q. If you want to get paid, right?

23 A. Some people did not want to take calls during certain
24 times.

25 Q. Okay. Was there any way that anybody could lose money

1 while working at Avant?

2 A. Yeah, I'm sure.

3 Q. How?

4 A. If you show up to the office, you will drive from your
5 house. That's an expense. If you decide to be there or to be
6 from home and log in and not take any calls, yes, you will lose
7 money.

8 Q. So it's basically just -- losing money is -- it's not
9 really losing money. It's not making money that day, right? I
10 mean, you can't go negative on the day?

11 A. Yes, you can.

12 Q. How do you go negative at Avant on the day?

13 A. Well, if you bought some equipment.

14 Q. What?

15 A. If you bought equipment, a headset, right --

16 Q. Okay.

17 A. -- a mouse and you decide to drive and you go somewhere to
18 do what you said you were going to do and then you decide not
19 to pick up the phone, yes, you would lose money. I don't think
20 any reasonable person would want to do that, right.

21 Q. That's the only risk. The only risk is you're driving to
22 work and whatever tolls and gas you spend. That's the extent
23 of your risks for the day, right?

24 A. What's the question?

25 Q. The extent of your risk for any given day is you drive in

1 and you spend money on gas and tolls. That's the total amount
2 of your risk per day at work at Avant, right?

3 A. Yeah. But they also have the option to not drive to the
4 office.

5 Q. In that case, if you're working from home, what risk do you
6 have of losing money?

7 A. You have to pay your own electricity, your own air
8 conditioning, right.

9 Q. Well, those are just bills. That's not a risk of losing
10 from work, right?

11 A. It depends on what you put on your tax form. If you are
12 working from home, if you were paying a lease, you would have
13 office expenses.

14 If you want to ask me a specific question, I would be able
15 to answer it more appropriately.

16 Q. Sure. Would Avant take any money away from any of the
17 clients -- in other words, charge them -- on a daily basis for
18 any use?

19 A. From any of the clients?

20 Q. No. My clients.

21 Would it charge -- would Avant charge Delio, Rafaela,
22 Carlos or Mariana? Would it charge them any money for using
23 any of the equipment?

24 A. No. It was there available.

25 Q. Would they charge them any money for any of the leads that

1 they received?

2 A. For what?

3 Q. Any of the leads that they received.

4 A. No. They were not charged for the leads.

5 Q. So when they went into work, they weren't going to get
6 charged any money. The only thing they could do at work was
7 make money, right?

8 A. What is the question?

9 Q. The only thing they could do at work was make money?

10 A. What is the question?

11 Q. Is the only thing they could do at work at Avant was make
12 money?

13 A. No.

14 Q. No. What else could they do at work? They couldn't lose
15 money, right, because Avant couldn't take it away.

16 A. They could have lost money.

17 Q. How if Avant doesn't take the money away?

18 A. By not picking up the phone, by driving to the office, by
19 staying at home and paying their electricity bill, by paying
20 their Internet, yeah.

21 Q. In other words, the same bills that they would've had if
22 they didn't go to work that day?

23 A. The same?

24 Q. The same bills they would've had if they didn't go to work
25 that day.

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1 A. I'm not sure.

2 Q. You're saying that they had these expenses only on the day
3 that they were working for Avant? They didn't have the
4 expenses on the other days? I don't get it.

5 A. So if you work from home, you're more prone to use more
6 electricity from when there is nobody home, right.

7 Q. Okay. Couple of bucks?

8 A. I don't know.

9 Q. That's their investment; it was a couple bucks that they
10 work from home?

11 A. If that's what their tax returns would show, yes.

12 Q. Have you seen their tax returns, by the way?

13 A. No, I have not. Have you?

14 Q. So you're just guessing when you say, If that's what their
15 tax returns show? You don't know?

16 A. Say it again.

17 Q. You don't know what their tax returns show. You're just
18 guessing?

19 A. What's your question?

20 Q. Are you just guessing about what their tax returns show
21 because you haven't seen them?

22 A. No.

23 Q. No, you're not guessing, or yes, I am guessing?

24 A. I don't understand your question.

25 Q. Let's rewind.

1 A. Okay.

2 Q. You said, If that's what their returns show, did you not?

3 A. I said maybe their tax returns would show something else.

4 Q. And my next question was: You haven't seen their tax
5 returns, have you? And you said no.

6 A. I haven't seen them.

7 Q. So as you sit here today, you don't know what their tax
8 returns show or don't show?

9 A. Correct. I don't know.

10 Q. As far as the leads that went to my client from clients,
11 those leads could come from outside the state of Florida as
12 well, right? It could be insureds who are looking for
13 insurance in Texas or in Illinois, as well as in Florida?

14 A. Yes.

15 Q. Because there are certain companies that you can sell to
16 outside of Florida, like Blue Cross Blue Shield, that you were
17 not authorized to sell in Florida, correct?

18 A. Can you please repeat that question?

19 Q. Sure. You were authorized to sell Blue Cross Blue Shield
20 insurance in Texas and Illinois. And is it true that you were
21 not allowed to sell that insurance in the state of Florida?

22 A. Correct. Because in Florida, the company that handles Blue
23 Cross Blue Shield is Florida Blue. Even though they issue
24 independent contractors to their agents, they mandate that you
25 must be exclusive. You can only sell their product. So we

1 chose not to work with Florida Blue for that reason. Because
2 as independent agents, we have the right to choose what company
3 we want to produce or not.

4 Q. Right. So you decided, as a company, what insurances you
5 were going to market?

6 A. Correct.

7 Q. And so my clients would then sell or market those insurance
8 products to the leads that they would be provided?

9 A. Your clients what?

10 Q. Were offered the insurance products that they were
11 authorized by your company to offer.

12 A. Correct.

13 Q. And so after my clients' phones would ring, they click a
14 button and they'd answer it. The next thing is they'd be
15 speaking with somebody on the other line, on the other end of
16 the line?

17 A. Well, for the most part, yes.

18 Q. And there was a live transfer that there was already
19 somebody on the phone, Hey, I am going to have you speak with
20 an agent, and, boom, Mariana clicks a button and now she's on
21 the phone with somebody?

22 A. Yes.

23 Q. Is she provided with the information on Radiusbob of who
24 that person is?

25 A. Is?

1 Q. Radiusbob shows up on the screen who is on her call?

2 A. For the most part, yes, if it already existed in the
3 system.

4 Q. So in order for that to exist in the system, let's say
5 Avant Assurance SAS would have already entered the information
6 into Radiusbob; is that correct?

7 A. It's not just one lead vendor.

8 Q. You had three or four?

9 A. We have some more, correct.

10 Q. But Avant SAS was the one who provided most of the leads to
11 your company; is that correct?

12 A. During that time period, yes.

13 Q. Okay. So most likely it was your company in Colombia would
14 go on and first talk to the prospect, enter their information
15 into the computer system, into Radiusbob, and then transfer the
16 call and that information to my clients?

17 A. Correct.

18 Q. And then my clients would -- you know, Rafaela would be on
19 the phone, and she would talk to the client and talk to the
20 prospect and find out what kind of insurance they were looking
21 for, right? That's basically what would happen? And talk to
22 them about the different options that were available for
23 insurance for what they qualified for and what the pricing was?

24 A. Correct.

25 Q. And then once somebody said, Okay, this is the insurance I

1 select. I want to go with Oscar, their whatever plan, Rafaela
2 would then do what? She would indicate which plan they wanted
3 in Radiusbob?

4 A. She what?

5 Q. Indicate in Radiusbob which plan that person wanted.

6 A. Yes. She would have to input the name of the company.

7 Q. And once she did that, the next step was what? To transfer
8 the call to the customer service department?

9 A. No. That was the end of the phone call.

10 Q. Would the customer service department follow up and do the
11 rest of the paperwork?

12 A. They did customer service, yes.

13 Q. And customer service is following up and completing the
14 rest of the paperwork to enroll that person in the insurance;
15 is that correct?

16 A. Sometimes, yes.

17 Q. I mean, that's not something my clients did. They weren't
18 the ones who were completing the paperwork and enrolling most
19 of the time, were they?

20 A. Some of them also did it. Delio did it, for example.

21 Q. At the beginning, Delio did it, right?

22 A. I don't recall when, but he did it.

23 Q. And more often than not, it was your customer service
24 department?

25 A. Say it again.

1 Q. More often than not, it was your customer service
2 department that would handle this paperwork so my clients could
3 go and try to sign somebody else up?

4 A. Correct.

5 Q. And Avant still uses the same procedure of gathering leads,
6 sending leads and then signing up new members with its
7 insurance agent through today; is that correct?

8 A. What's the question again?

9 Q. Sure. Avant uses the same procedure of gathering leads,
10 taking their information, sending it to the agent and then
11 having the agent try to get the lead to enroll in an insurance
12 policy?

13 A. Yeah, that's pretty much the same.

14 Q. It's the same then and the same now?

15 A. Correct.

16 Q. And it's the same for the agents who worked at Avant before
17 and the agents who work at Avant now?

18 A. Correct.

19 Q. And then after the agent completes their transaction, your
20 customer service team is next involved, right?

21 A. The customer service team --

22 Q. Is involved afterwards, after the agent's done talking.

23 And the insurance company finds out that they have a new
24 member because they are contacted -- or the information is
25 provided by your customer service team, right?

1 A. Correct.

2 Q. And what they do is they do the data entry?

3 A. Data entry, yes.

4 Q. And you're familiar with the data entry because that's
5 something -- when you started with the company, you did it
6 yourself?

7 A. I did it at the beginning, yes.

8 Q. When Mr. Batista started working for you, did he have to
9 complete any paperwork?

10 A. Paperwork, no.

11 Q. Did you provide him with a W-9 to fill out so you knew who
12 and how to report the taxes?

13 A. After we had an agreement that he was going to be an
14 independent contractor, he probably signed a W-9.

15 THE COURT REPORTER: He signed a what?

16 THE WITNESS: A W-9.

17 BY MR. POLLOCK:

18 Q. So it was your responsibility to go ahead and provide him
19 with the W-9 so he could complete it, right?

20 A. Anybody can get a W-9 from the IRS website.

21 Q. Sure.

22 A. So it wasn't my responsibility to provide that to him.

23 Q. But it's your responsibility to accurately report the money
24 that you paid to him that year, right?

25 A. Yes.

1 Q. And you do that on a 1099?

2 A. Correct.

3 Q. And in order to know how much -- who to report the money
4 to, you utilize a Form W-9 from the IRS?

5 A. Correct.

6 Q. And when you utilize a W-9 from the IRS, you're reporting
7 nonemployee compensation, are you not?

8 A. Correct.

9 Q. And so because you're utilizing a form where you're
10 reporting nonemployee compensation, you don't pay any
11 employment taxes for the money that you paid to Mr. Batista;
12 isn't that right?

13 A. Yeah. If they are not an employee, we don't pay employment
14 taxes. That's correct.

15 Q. Right. If you don't pay them as an employee, then you
16 don't pay employment taxes, and you don't withhold any taxes as
17 well, correct?

18 A. That's the process for 1099s.

19 Q. Right. And then if you also have a 1099, then you also
20 don't have to cover them with Workers' Compensation insurance,
21 do you?

22 A. Correct.

23 Q. And so you have Workers' Compensation insurance at your
24 company now because you have employees?

25 A. Correct.

1 Q. And you know that the Workers' Compensation premiums are
2 based on a couple factors. One of the factors is they want to
3 see how much your payroll is; isn't that correct?

4 A. Correct.

5 Q. So the more money that you pay to your employees, the more
6 you have to pay for your Workers' Compensation insurance
7 premiums; isn't that right?

8 A. If that's how it works. I'm not an expert in how to
9 calculate Workers' Compensation premium.

10 Q. So it's less expensive for you as a company owner to
11 classify people as 1099s because you don't have to pay payroll
12 taxes and you don't have to pay Workers' Compensation
13 insurance, right?

14 A. Let me give an example right now.

15 Q. Is it yes or no?

16 A. Can you please repeat your question?

17 Q. Sure. As a company owner, it's cheaper for you to classify
18 people as 1099s because you don't have to pay payroll taxes and
19 you don't have to pay Workers' Compensation insurance; isn't
20 that correct?

21 A. No, that's not correct. Those are your words.

22 Q. So it's more expensive to classify people as 1099s. Is
23 that what you're saying?

24 A. No.

25 Q. So it's not more expensive and it's not less expensive.

1 It's the same? That's the only option we've got left.

2 A. I'm not sure what you are trying to ask. You are not
3 asking me the right question, so I can't help you.

4 Q. When Delio and Rafaela first started working for you, you
5 issued 1099s to them individually, did you not?

6 A. Individually as first, right?

7 Q. Yeah.

8 A. Yes.

9 Q. I mean, at some point, did you issue a 1099 to
10 Ms. Valiente's company?

11 A. Correct, at their request.

12 Q. Well, did you help her form the company?

13 A. Say again.

14 Q. Did you help her form her company and tell her how to do
15 it?

16 A. Yes. It's very simple. Anybody could do it.

17 Q. And so you told her, Hey, it will be better for you from a
18 tax perspective if you open your own company and if I pay your
19 company instead of paying you, didn't you?

20 A. Say again.

21 Q. You told her it's better for her that you pay her through
22 her company instead of paying her directly?

23 A. No. That's not true. Please don't put words in my mouth.

24 Q. She just decided one day to open up a company and have you
25 pay it?

1 A. You'll have to ask Rafaela. She will give you a better
2 answer to that.

3 Q. Okay. I'm sure she will.

4 A. Yeah.

5 Q. And how about Delio; you always paid him as an individual?
6 You never paid any company for Delio, right?

7 A. No. He chose to be paid individually. And the only one
8 out of the four like this.

9 Q. Now, in the Radiusbob software, once, let's say, Mariana is
10 able to sign up a lead with Ambetter insurance, in Radiusbob
11 her name is then associated with that new member, right?

12 A. Correct.

13 Q. And then we go through and repeat the process for Carlos
14 and Delio and Rafaela.

15 So no matter who the agent is, if you are the one who
16 signed up the new member, then your name gets attached to that
17 lead in Radiusbob?

18 A. Correct.

19 Q. All right. I have put up what we have marked as Exhibit 6,
20 which is in evidence.

21 (Plaintiffs' Exhibit No. 6 was identified.)

22 (The exhibit was published to the jury.)

23 BY MR. POLLOCK:

24 Q. This is one of the client consent statements that you
25 mentioned you had put together; is that correct?

1 A. What's the question again?

2 Q. Is this one of the client consent statements that you
3 created?

4 A. Correct, yes.

5 Q. And you indicated that this document would not be sent out
6 by the Blueink -- excuse me -- by the Radiusbob software; that
7 you would send this out through something else. It would be
8 sent out through Blueink?

9 A. Yes. It was a separate platform.

10 Q. It was a separate platform. Blueink is like a DocuSign.
11 It's a certified software that you can use to send out
12 something for electronic signature?

13 A. Yes. It's a platform to capture an electronic signature.

14 THE COURT REPORTER: I'm sorry. What was the answer?

15 THE WITNESS: It's a platform to capture electronic
16 signatures.

17 BY MR. POLLOCK:

18 Q. Why did you use this form?

19 A. To protect the agents and to protect the agency from
20 consumers saying that they did not authorize the enrollment.

21 Q. Was this a document that you required to be used?

22 A. Say again.

23 Q. Was this document required to be used?

24 A. No. They were free to send it or not at their own
25 discretion and judgment. And some consumers were not able to

1 figure out how to electronically sign.

2 Q. How did you tell your agents about this client consent
3 statement?

4 A. I presented this to them. I asked them, Would you like --
5 Would you guys like to be protected in case a consumer denies
6 that they gave you consent to be enrolled? And they said, Yes,
7 we would love to have something like that. So we put it in
8 place for them.

9 Q. And besides this client consent statement, there were other
10 ways that Avant was protecting its agents from claims by
11 members that, I didn't authorize the transaction; isn't that
12 right?

13 A. There could be the phone recordings.

14 Q. Yes. Because every phone call was also recorded through
15 the software, right?

16 A. I'm not sure that every phone call was recorded, but that's
17 the purpose. They should have been recorded.

18 Q. It should've been recorded.

19 And again, that's an expense that was borne by Avant -- was
20 it was recording all the calls that the agents were on, right?

21 A. Say again.

22 Q. Avant was recording all the calls that the agents were on
23 while at work?

24 A. Yes.

25 Q. And not just recording, but you and your wife would listen

1 to those calls every once in a while just to make sure that
2 they were being done properly?

3 A. Not necessarily. I wasn't paying attention to what they
4 were doing on the phone, to be honest.

5 Q. So you never listened to calls?

6 A. I never --

7 Q. Listened in on calls.

8 A. Not when they were doing it for the purpose of listening,
9 no.

10 Q. What about afterwards; would you listen to the recordings
11 afterwards?

12 A. For one of the agents, yes, preventing them from committing
13 fraud.

14 THE COURT: Should we stop here for lunch? All right.

15 Ladies and gentlemen, we will take our lunch break.

16 My courtroom deputy, Mr. Condon, is going to meet you in the
17 jury room briefly to have you fill out some forms for us, as
18 well as to give each one of you my business card. It has the
19 phone number of my chamber should you need to contact us during
20 anything -- at trial, if you're running late or encountering an
21 issue.

22 You're free to leave the jury room for lunch and go
23 anywhere in the building or outside. I ask that you all return
24 by 1:45, giving you an hour and 15 minutes for lunch. Again,
25 please avoid contact with the parties and those whom you see

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1 have a relationship to the case and be back gathered in this
2 jury room. This is the 13th floor. Be back here by 1:45.
3 Thank you.

4 COURT SECURITY OFFICER: All rise for the jury.

5 (The jury exited the courtroom at 12:30 p.m.)

6 THE COURT: And, Mr. Cortes, you're still under oath.
7 Please don't discuss your testimony during this lunch break.

8 Are there any questions?

9 How much longer with this witness?

10 MR. POLLOCK: It's going to be a little while.
11 Probably a couple more hours.

12 THE COURT: Is he the only witness we're going to hear
13 from today?

14 MR. POLLOCK: We also have Jennifer Manjarres. And
15 then -- because we had to set up the interpreters and then the
16 interpreter will go tomorrow with the rest of the witnesses to
17 push through.

18 THE COURT: All right.

19 (Pause in proceedings.)

20 MR. POLLOCK: Judge, how do you want to do this? Are
21 we going to do Plaintiffs case and Defense case, or do you want
22 the Defense to take their witness?

23 THE COURT: They don't have to. They can hold off on
24 cross-examining their clients until their case in chief.

25 MR. POLLOCK: Okay.

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(Pause in proceedings.)

THE COURT: All right. We'll see you all.

MR. POLLOCK: Thank you, Judge.

MR. TROPP: Thank you.

THE COURT: Have a good lunch.

THE WITNESS: Thank you.

(Witness temporarily excused.)

(A lunch recess was taken at 12:32 p.m.)

A F T E R N O O N S E S S I O N

(1:46 p.m.)

THE COURT: Can we bring the witness in, please, and have the witness back on the stand?

Did you want to go in the back?

THE JUROR: Thank you so much.

(Pause in proceedings.)

THE COURT: Everyone, please be seated.

Please proceed.

DIRECT EXAMINATION (Cont'd.)

BY MR. POLLOCK:

Q. Mr. Cortes --

THE COURT: Use the microphone, Mr. Pollock.

BY MR. POLLOCK:

Q. Mr. Cortes, do you agree with me that it was important for Avant Assurance to have insurance agents?

A. To have insurance agents, yes.

Q. Meaning, do you agree that you really couldn't run your company without having insurance agents?

A. Correct.

Q. And I think before we went to lunch, you talked about how you had different agreements with my clients about how they would be paid, right, when they first started?

A. That we had different agreements?

Q. Yes.

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1 A. Meaning --

2 Q. Meaning they negotiated different agreements about how they
3 would be paid when they first started working for your company.

4 A. For two of them, they had different agreements because
5 every year the compensation changes.

6 Q. So for Rafaela, when she started, she was getting \$10 per
7 member?

8 A. Probably. It's possible, yes.

9 Q. At least when she started until the second open enrollment
10 period for '21/'22.

11 A. It could be, yeah.

12 Q. And then for Delio, Delio was getting about the same, \$10
13 per member?

14 A. Correct, the same.

15 Q. And the difference was -- and those are the only two who
16 worked from 2020 to 2021 for that whole year?

17 A. Yes.

18 Q. Yes?

19 A. Yes.

20 Q. What Delio and Rafaela would receive is \$10 per member for
21 every month that that member was still -- had insurance active;
22 isn't that right?

23 A. Correct.

24 Q. And then Mariana came on board. And when Mariana came on
25 board, at first she was getting paid a combination. She was

1 getting hourly pay at \$20 an hour, plus she was getting a
2 certain amount for each member; is that right?

3 A. It was either one or the other.

4 Q. Your recollection is it was one or the other, but you don't
5 know for sure or you're definitely sure she was only getting
6 one or the other?

7 A. It's one or the other.

8 Q. Okay. So at first, Mariana was getting \$20 an hour?

9 A. It's probably that amount.

10 Q. All right. So Mariana comes on board. She's an
11 independent contractor, but she's paid hourly. And then
12 afterwards, you convert her to getting paid the commission?

13 A. We both got into an agreement that that did not work out
14 for her and she wanted to get paid straight commissions.

15 THE COURT REPORTER: And she wanted to get -- I'm
16 sorry. Could you move the microphone closer?

17 THE WITNESS: I'm sorry. Yeah.

18 That she wanted to get paid straight commissions. She
19 wanted to get more compensation.

20 BY MR. POLLOCK:

21 Q. You also told us that at first the Kendall office was
22 small. It had eight or nine workstations in the middle and
23 then it had three private offices, right?

24 A. Yes.

25 Q. And then after that -- I think it was in May or June of

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1 last year -- you moved to the office in Doral?

2 A. Correct.

3 Q. And the office in Doral was bigger. It was what, like a
4 whole floor?

5 A. No. Just bigger, not a whole floor.

6 Q. So it was bigger. It had -- it had about how many private
7 offices?

8 A. The new one?

9 Q. The new one.

10 A. Give me a minute. I will give you the answer. About six
11 to eight.

12 Q. Six or eight private offices. And then how many were in
13 the call center and the workstations in the building?

14 A. Approximately 30, I believe.

15 Q. Now, at first we talked about how Delio and Rafaela were
16 paid, and that was by commission where they were getting \$10
17 per member for each month that the insurance policy was in
18 place. And that paid practice changed for the next year for
19 November 1 of 2021 through 2022; is that right?

20 A. Correct.

21 Q. And in making that decision about changing how the agents
22 would be paid, that was your decision; is that right?

23 A. It was my decision, and they also agreed to it.

24 Q. Right. They agreed to it because they either continued
25 working or they came on to start working with you once you

1 offered that pay scale -- or that pay process of commission,
2 right?

3 A. What is the question again?

4 Q. Sure. My clients agreed to it because they either
5 continued working for you -- right?

6 A. That's one option.

7 Q. -- or they started working for you. In other words, if
8 they didn't like it, they could've left?

9 A. Yeah. They were free to accept the amount.

10 Q. And they accepted the new pay structure that you put out
11 because they continued to work for you?

12 A. Correct.

13 Q. Okay. The new pay structure was different because the
14 amount of money that would be paid to the agent depended on
15 which insurance company they were selling?

16 A. I believe so.

17 Q. And the other difference is that my clients, instead of
18 getting a commission for the whole year, they would only get
19 one month's worth of the commission. Is that also true?

20 A. Yeah. And that month would have been three times as higher
21 as the first agreement.

22 Q. And that's fair.

23 A. Yeah.

24 Q. Whereas in 2020 to 2021, my clients were getting about \$10
25 a member. The next year, the scale was different where they

1 could get anywhere from 15 to 35 dollars a member; is that
2 right?

3 A. Correct.

4 Q. I am going to show you what's in evidence as Exhibit 8.

5 (Plaintiffs' Exhibit No. 8 was identified.)

6 (The exhibit was published to the jury.)

7 BY MR. POLLOCK:

8 Q. And see if you recognize that document.

9 A. Yes.

10 Q. This is a two-page document.

11 When we talk about the different amounts that Avant would
12 pay its insurance agents per member, this is the agreement that
13 we're talking about; is that right?

14 A. That is one, yes.

15 Q. I'm sorry?

16 A. The latest agreement, correct.

17 Q. This is the latest agreement.

18 And this talks about the policies and that they -- my
19 clients would receive commissions and bonuses and the different
20 amounts they would get paid depending on which insurance
21 company they were writing policies for. Am I understanding
22 this correctly?

23 A. What is the question?

24 Q. If I'm understanding that this document shows how much
25 money my clients would get for each person they enrolled in

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1 insurance.

2 A. For each of the insurance companies, correct.

3 Q. So if they enrolled somebody in Oscar, they would get \$35
4 per member, and then if they enrolled somebody for Aetna, they
5 would only get \$15 for that member. Is my reading of this
6 document --

7 A. Yes.

8 Q. -- accurate? Okay.

9 There was another part to the compensation, which was that
10 you were also incentivizing my clients to sell specific
11 insurance policies -- insurance plans through the bonus
12 structure that we have here. Is that what you were doing?

13 A. Correct. Certain insurance companies offer the bonus, and
14 we made the offer -- we extended the offer to the agents as
15 well.

16 Q. Now going back to the compensation plan, the \$35 for
17 Ambetter and Frye and Oscar, the \$15 for Aetna, Cigna and
18 UnitedHealth or the \$5 for Bright, Blue Cross Blue Shield of
19 Illinois and Texas and Molina, are these amounts how much the
20 insurances would pay Avant each month?

21 A. How much --

22 Q. These insurance companies would pay Avant each month each
23 member.

24 A. Different amounts. It varies by insurance company.

25 Q. Let's say for Ambetter, would Ambetter pay your company \$35

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1 a month for each member for each month?

2 A. It also depends on the state that the member is placed. So
3 it's not like a straightforward formula that I can explain. If
4 you give me time, I will explain.

5 Q. So what you're saying is that even though you were paying
6 an agent \$35, it doesn't mean that Ambetter would be paying
7 your company \$35 for that member?

8 A. That's correct. It could have been less.

9 Q. Now, when your customer service team goes ahead and inputs
10 all the information to sign up a new member, is it true that
11 the customer service team would put your name as the producing
12 agent for each of those policies?

13 A. Yes. For certain insurance agencies, it is a standard that
14 the agent of record will have been the principal from the
15 agency, and that is done to prevent from theft and for
16 protecting the consumer's information.

17 Q. And I appreciate that for other agencies. I just wanted to
18 point out from your agency. The practice at your agency was --
19 and please correct me if I'm wrong -- that your name would be
20 the producing agent for every insurance policy written?

21 A. Correct.

22 Q. Because your name was associated with each insurance
23 policy, is it true that the insurance companies would then
24 understand that you were the agent for each of those policies?

25 A. Correct.

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1 Q. So the opposite of that is the insurance companies didn't
2 know that it was either Delio, Mariana or Rafaela or Carlos who
3 sold the policy?

4 A. What's your question again?

5 Q. That the insurance companies didn't know that it was Delio
6 or Rafaela or Mariana or Carlos who actually wrote that policy.

7 A. Correct. And that's standard in the insurance industry.

8 Q. And more importantly, that's standard in your business,
9 right?

10 A. Yes. In order to protect consumer's information, yes.

11 Q. Let's talk about why else you did that. Insurance
12 companies we talked about earlier, they don't issue payment
13 right away to Avant, do they?

14 A. Would you mind repeating the question?

15 Q. Sure. The insurance companies don't pay your company for
16 every policy that you wrote for them immediately?

17 A. No. Correct, yeah.

18 Q. Is it true it takes anywhere from 30 to 60 days to get
19 payment?

20 A. Yeah.

21 Q. When those payments come in, do they come in by direct
22 deposit or wire?

23 A. Direct deposit.

24 Q. And when you get this direct deposit, does the insurance
25 company also send you a statement, a commission statement?

1 A. Yes.

2 Q. And on the commission statement, does it identify the agent
3 associated with each insurance policy?

4 A. Correct.

5 Q. And that agent would be you for every policy?

6 A. For the most part. Not for all of them.

7 Q. Because for some of them, did you put your wife's name?

8 A. It could have been. Or during processing, it could have
9 been one of the Plaintiffs' name.

10 Q. You're saying during processing it could've been one of my
11 clients' names, and that would've just been an error by the
12 processing department?

13 A. I still would have got paid regardless.

14 Q. So your name is the agent of record. Then it also has what
15 for each insurer? Does it have their name or what identifying
16 information for each insured on the commission statement?

17 A. What is the question?

18 Q. Does the -- how -- the commission statement that you
19 receive from the insurance company has your name for every
20 policy. Does it have the names of the people who got insurance
21 or does it have a phone number or a customer number? How are
22 they identified?

23 A. It has the policyholder's name, yes.

24 Q. And because every commission statement from every insurance
25 company almost for every insured you are named, is it you who

1 decided which agent was going to get paid or credited for which
2 insured?

3 A. So based on the records that they also input in their own
4 system, that's what I would recollect and match against their
5 records to make sure who was supposed to get paid.

6 Q. What do you mean you would match against their records?

7 A. Right. So before we went on break, we put a statement that
8 in the box, CRM, their name would be the agent who sold the
9 member, correct? So we will match the statement against that
10 same customers in the CRM to match out and see who was here and
11 who sold the policy. Very simple process.

12 Q. In this simple process, were you the one who would take the
13 commission statement and look at the Radiusbob CRM to match up
14 to see who should get paid for each policy?

15 A. Yes. Because I personally wanted to make sure that they
16 were getting paid the correct amount.

17 Q. And you were the only one -- or you and your wife were the
18 only ones at Avant who would take a look at these commission
19 statements from the insurance companies; isn't that right?

20 A. Not even my wife. It was me.

21 Q. So only you saw the commission statement and only you were
22 the one who would look at it against the information in
23 Radiusbob?

24 A. Correct. It was my responsibility to get the agents paid
25 what they worked for.

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1 Q. So do you agree that it was very important for you to be
2 accurate in deciding who gets paid for which insurance policy?

3 A. 300 percent.

4 Q. Do you agree that you're in a position of trust in doing
5 this because you're dealing with other people's -- my
6 clients' -- money?

7 A. What was the question?

8 Q. Do you agree that you were in a position of trust, that my
9 clients needed to trust you to be honest when you're doing this
10 accounting because in the end you're dealing with their money?

11 A. Right. And after we send in commission statements, they
12 had the opportunity to review them and to raise any claims, and
13 they never raised any claims. So it's not like I was the only
14 source of truth. They had all their records in their
15 possession to count their balance and commission statements
16 that I was sending to them. They never raised any claims.

17 Q. Well, they have all the records from Radiusbob, but they
18 don't have the commission statements from the insurance
19 companies, do they?

20 A. Right. It's very simple, Mr. Pollock. If you see the
21 commission statement on your left hand and you have access to
22 your record from the CRM, you can cross reference to make sure
23 that you are getting paid everything you sold on. And if you
24 don't get paid, you have all the right to raise a question and
25 send an e-mail and inquire about why you're not getting paid

1 for a certain policy. That never happened.

2 Q. There were differences, though, between the records that
3 were in Radiusbob and the records that you would send out to my
4 clients showing that they were paid, weren't there?

5 A. There were --

6 Q. Differences.

7 A. Meaning --

8 Q. Well, the records were either the same for what you're
9 paying them or they're different. And you were paying my
10 clients different than the records that they had; isn't that
11 right?

12 A. I'm not sure what was the question.

13 Q. Well, do you agree that you were paying my clients for less
14 policies than they believed they should be paid for?

15 A. It could have been a certain time because we did not get
16 paid from the insurance company, and that was requirement
17 No. 1.

18 Q. Well --

19 A. Do you see requirement No. 1?

20 Q. Does every insurance policy that my clients -- did every
21 insurance policy get paid by the insurance company?

22 A. No. It could have been that you, Mr. Pollock, as a
23 licensed agent sold me a policy to me as a customer and then
24 one of our members from the jury, also a licensed agent, would
25 have sold me the same policy. So the last agent on the

1 application would have been the last agent that would have
2 gotten paid, and sometimes it even happened amongst the
3 Plaintiffs.

4 Q. Well, on the application, is it your name every time?

5 A. Say again.

6 Q. On the application, isn't it your name every time?

7 A. Right. But there was a record for the CRM that they put in
8 themselves.

9 Q. And so when there's two people with the same insured, you
10 would decide who got paid; is that correct? Yes or no.

11 A. What's the question again?

12 Q. If there were two people --

13 A. Two people. Two licensed agents or two members?

14 Q. Two agents.

15 A. Okay.

16 Q. -- at your insurance agency -- so the same policy to the
17 same person.

18 A. Okay.

19 Q. Was it you who decided which agent to pay for that
20 commission?

21 A. No. They decided that.

22 Q. How did they decide that? Did you give them the option?

23 A. We held a meeting because we knew that was going to happen.
24 And they decided that the first agent who sold the policy was
25 going to be owner for commission of that policy. That was

1 courtesy of most licensed agents.

2 Q. Because a moment ago, I thought you said it was the last
3 person who was -- who sold the policy for the one who got paid.
4 So was it the first person, or was it the last person?

5 Because, frankly, I'm confused.

6 A. I know. So let me explain to you. So what I mean the last
7 person, I mean somebody who does not work for Avant Assurance.
8 It could have been a third-party agent, but it's not related to
9 us. So we have no control of what that third party might do or
10 not. Amongst themselves, they agreed that the first agent was
11 going to be the one getting the credit, the commission, the
12 payment for that policy.

13 Q. If it's an agent who doesn't work for Avant, that insured's
14 name isn't going to appear in your commission statement, will
15 it?

16 A. It wouldn't, yeah.

17 (Pause in proceedings.)

18 BY MR. POLLOCK:

19 Q. Would there normally be a difference between the number of
20 policies that were sold by my clients and the number of
21 commissions that you were paid for by the insurance company?

22 A. Yes.

23 Q. Is that because some people just didn't want to sign up?

24 A. Some people did not complete the enrollment or they got
25 taken by another agency who is not within our agency.

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1 Q. Isn't it true that some people didn't want to pay?

2 A. Or that could have been so, yeah.

3 Q. And so there would be a difference between the policies
4 that were in Radiusbob and the policies that were identified in
5 the commission statements; is that correct?

6 A. Yes. There could have been differences.

7 Q. As far as my clients were concerned, they had no way to
8 tell which policies were in place and which policies weren't?

9 A. Oh, yes, they did.

10 Q. How is that?

11 A. They could have called the consumer to confirm the
12 enrollment and they never did.

13 Q. So my client sold -- let's say that your records show that
14 Delio -- I don't know -- sold 507 clients or insureds to Oscar
15 for one year, but he thought he sold 700. Delio would have to
16 go ahead and call 293 people to find out what happened when you
17 had the commission statements?

18 A. I cannot speak for what somebody could have done. I can
19 tell you what I would have done. If I am the sales agent and I
20 have my records that I sold 100 policies and I'm getting paid
21 50, I'm going to verify by calling my customers to actually see
22 if they completed the enrollment especially because I know that
23 there could have been some hiccups along the way.

24 Q. Wouldn't it have been easier to show the commission
25 statements?

1 A. Say again.

2 Q. Wouldn't it have been just easier to share the commission
3 statements --

4 A. Well, they're not the only agents --

5 Q. Excuse me.

6 -- so the agents didn't have any questions, post them for
7 everybody to see?

8 A. They're not the only agents that we have in the agency, so
9 there is confidentiality on the records that we have. So once
10 you bring your question to us, yes, we can sit down, evaluate
11 with you all the policies. They never raised any question.

12 And it's not like I could share the commission statement
13 for other agents that are not related to them. That would be
14 me violating confidentiality with the other agents'
15 compensation.

16 Q. My clients could log into Radiusbob and see what name in
17 there is associated with what insurance agent and what
18 insurance policy, couldn't they?

19 A. What is the question?

20 Q. In Radiusbob, my clients could log in; they could look for
21 Joe Smith.

22 A. Correct.

23 Q. And they can see that Joe Smith had a policy sold for Blue
24 Cross Blue Shield of Illinois by -- I don't know -- Raul Smith.
25 They can see that. They weren't limited to seeing only the

1 policies that they sold.

2 A. They can only see their own policies.

3 Q. In Radiusbob?

4 A. Correct. Because why would you give access to an agent to
5 look at other agents' records?

6 Q. And then the commission statements only had the names of
7 the insureds, your name and the amount of commission that was
8 paid from each insurance company, right?

9 A. Correct.

10 Q. So why don't you share the commission statements? That has
11 nothing to do with how much another agent is making or not
12 making.

13 A. Because my name was not the only name on the commission
14 statement. I said it before.

15 Q. Right. It would be your wife's or possibly every once in a
16 while the customer service department had a hiccup and maybe
17 another agent's number here and there.

18 A. Yeah. Thank you for assuming, but we're not here to
19 assume. We had more agents than just the Plaintiffs in place
20 in here.

21 Q. And we have to assume because, of course, you're not going
22 to show us the commission statements at all.

23 A. Why not? Why not?

24 Q. Well, because you never produced them during the course of
25 this case, and so, as a result, the jury's not going to be

1 allowed to see them, as much as we'd like to.

2 So in addition to paying these commissions, we also had the
3 bonuses. And what the records are going to show in this
4 case -- and I think you'll agree with me -- is that most of --
5 that my clients, and I'm sure most of your agents, were pushing
6 for 2021 and 2022 to sell Oscar because of the bonuses that
7 were in place; isn't that right?

8 A. No, it's not right.

9 Q. Okay.

10 A. Oscar was the most competitive carrier for that year. So
11 by default, that would have been the carrier that they would
12 have sold the most, not just because of the bonus. Again,
13 we're not here to assume.

14 Q. And so what was happening was my clients were selling a lot
15 of Oscar policies because, one, they were competitive and, two,
16 because they knew if they sold over 300, over 350, over 600
17 policies, they were going to get a substantial bonus, according
18 to what you decided they would receive; isn't that right?

19 A. Correct.

20 Q. And then bonuses were supposed to be paid in April?

21 A. They would receive compensation. It says this right there.

22 Q. Okay. And, again, because you haven't showed the
23 commission statements, you're not going to show us when exactly
24 those policies were paid out; isn't that right?

25 A. What is the question?

1 Q. I'm just saying: You're not going to show us the records
2 to show when you were paid, are you?

3 A. I don't understand the question.

4 Q. Well, you said, We're not just going to pay April. We're
5 going to pay when we get paid.

6 A. Correct.

7 Q. So, again, you don't have the records to show us when the
8 insurance companies paid you, that you didn't, you know, show
9 us in court, did you?

10 A. Will you admit us to show it?

11 Q. I haven't seen them in 11 months. Today, tomorrow, the
12 next day ain't going to be the first day.

13 A. Okay.

14 Q. That time has passed.

15 So as far as my clients are considered, they've got to take
16 your -- they've got to take your word for it that you
17 accurately decided how many policies they were getting paid
18 for. Do you agree?

19 A. No, I do not.

20 Q. You don't agree they had to take your word for it?

21 A. No. They had the right to go in there and find out for
22 themselves, like I said before.

23 Q. And how do they verify if they don't have the commission
24 statements? By calling every --

25 A. They do have the commission statement because it was being

1 sent to them on a regular basis, like I explained before.

2 Perhaps let me rephrase it so you will be able to understand it
3 better.

4 They received the commission statement. They have their
5 records on their right hand. They could put one against the
6 other one. For the ones that are missing, they have all the
7 right, first of all, to say that they were missing their
8 commission statement; second, to compare them themselves.
9 Maybe there was something that they're missing in the
10 enrollment process that the enrollment wasn't finished. They
11 never did that.

12 Q. You keep saying commission statement. What you mean to say
13 is the Excel spreadsheets that you put together, right?

14 A. Yes. That is a commission statement by definition.

15 Q. And so that Excel spreadsheet that you put together is
16 different than the commission statement that the insurance
17 companies would post in their portals for you?

18 A. Yes. They're both commission statements regardless.

19 Q. They are. One of them is from the insurance company to say
20 what policies they paid for. The other is what you created on
21 your own; isn't that right?

22 A. Correct.

23 Q. And so my clients had to rely on what you sent around to be
24 correct in order to get paid; don't you agree?

25 A. Yes. We also have to rely on the commission statement that

1 we receive from the insurance company. And if we had a
2 question, we would have consulted the insurance company why
3 we're not getting paid a certain member, but that actually
4 never happened because nobody raised any question about missing
5 commission before.

6 Q. And so just like my clients had to rely on you, right, to
7 decide which policies they were going to get paid on, we also
8 have to rely on you to believe whether -- to believe you in
9 saying my clients never complained?

10 A. What is the question? You asked three questions in one and
11 it gets me confused. I'm sorry.

12 Q. I understand the questions you don't like you start getting
13 confused with. So I will try to ask them a little bit more
14 simpler so even if you don't like them, you still have to
15 answer them.

16 So we have to believe you that you prepared these
17 commission statements with a hundred percent accuracy, don't
18 we?

19 A. No.

20 Q. We don't have to believe you? Because what you're saying
21 is my clients could have complained to you.

22 A. Yes. They have their own records. They could evaluate
23 what I produce for them.

24 Q. And then we've got to believe you that they never
25 complained. That's what you're saying?

1 A. No.

2 Q. We don't have to believe you?

3 A. No.

4 Q. Okay.

5 A. You can also hear them out and decide who you want to
6 believe or not.

7 Q. Good advice.

8 MR. CUMMINGS: Excuse me, Your Honor. My client's
9 monitor hasn't been working.

10 THE COURT: I am not your technical person, but I will
11 let my courtroom deputy know.

12 BY MR. POLLOCK:

13 Q. Mr. Cortes, are you the one who came up with these bonus
14 plans?

15 A. Correct, yes.

16 Q. Is that -- would the insurance company also give you a
17 bonus if you had so many members sign up under one insurance
18 plan?

19 A. No. It's probably a different amount that we got from the
20 insurance company.

21 Q. Because if an agent sells 600 policies, they're entitled to
22 get \$25,000; is that right?

23 A. Based on the scale, yes.

24 Q. And as far as the insurance companies know -- Oscar in
25 particular -- you would've sold thousands of policies, right?

1 A. Correct.

2 Q. And so you would've gotten a much bigger bonus because you
3 would've looked like an amazing producer who had thousands of
4 policies written; isn't that right?

5 A. Yes.

6 Q. And you had a condition on paying out the bonus, did you
7 not?

8 A. I had a what? I'm sorry.

9 Q. A condition to pay out this bonus to your agents.

10 A. Yes. It's a similar condition than the one that we get
11 from the insurance companies.

12 Q. And the condition, if I'm understanding you correctly, is
13 that the agent still needed to be producing for the insurance
14 company in order to be paid the bonus?

15 A. They need to have a good-standing relationship with the
16 agency, yes.

17 Q. Well, from the insurance company's standpoint, the agent of
18 record needed to still be producing for that insurance company;
19 isn't that right?

20 A. In good standing, yes.

21 Q. In good standing, meaning there's still an agent of record
22 for that company?

23 A. Correct.

24 Q. And so as far as every insurance company knew, you were the
25 agent of record and you were still in good standing; isn't that

1 right?

2 A. What is the last question?

3 Q. As far as every insurance company knew -- April, May, June,
4 July, August of 2022 -- you were the agent of record for almost
5 every policy and you were in good standing with them?

6 A. Yes.

7 Q. And so the fact that my clients had to be actively
8 producing for your company, that was totally unrelated to what
9 the insurance companies required of you; isn't that right?

10 A. No. It was the same requirement that they had on me.

11 Q. Why would you impose that requirement on my clients if the
12 insurance companies never knew they existed?

13 A. Well, it is a standard because there is a retention clause
14 attached to this one. So for you to earn a bonus, you have to
15 be there in order to serve the member. If you're no longer
16 engaged with the company, you cannot provide service to the
17 member, so they wouldn't pay you the bonus.

18 Q. Doesn't your customer service department handle the
19 servicing with the clients?

20 A. They only handle service when it comes to setting up a
21 doctor's appointment, looking up an ID card. When it comes to
22 insurance-related matter, that was them, that was the licensed
23 agent, the one that needed to service the member.

24 Q. What insurance-related matter comes up three, four, six
25 months after a policy is in place?

1 A. Very simple. You go to a doctor; they charge you at the
2 doctor that you weren't aware that you had. You forgot that it
3 was there. So you have questions about your deductible. You
4 have an out-of-pocket expense. You have questions about that.
5 Customer service wouldn't know any of those answers, so it
6 would go back to all the licensed agents.

7 Q. But don't the consumers normally just call the insurance
8 company itself and ask about that?

9 A. No. They will call us most of the time.

10 Q. And you don't refer them back to the insurance company and
11 say, Hey, the insurance company has all the answers?

12 A. It didn't work like that, Mr. Pollock. As a licensed
13 agent, you have a duty to answer your customers' questions.
14 You can't just refer them to somebody else without trying to
15 resolve it yourself first.

16 Q. And so for my clients, the only one who resigned was
17 Mariana, right?

18 A. Mariana, yes.

19 Q. And Mariana resigned after she got her bonus; is that true?

20 A. Correct, yes.

21 Q. And is it also true that Mariana is the only one who got
22 the \$25,000 bonus paid to her?

23 A. Out of the four individuals, yes.

24 Q. Out of my clients, yes.

25 And Mariana got the bonus not in April, not in May, not in

1 June; she got it -- when? -- July 6th?

2 A. In July.

3 Q. And Mariana got her bonus right after she was presented
4 with a document; isn't that right?

5 A. Which document?

6 Q. Well, did you present Mariana with any documents to sign in
7 July of 2022?

8 A. Not just to Mariana; to all the licensed agents we had at
9 the time.

10 Q. And that document was a noncompete agreement, wasn't it?

11 A. What's that?

12 Q. Noncompete agreement.

13 A. Yeah. And she didn't sign it and she still got her bonus,
14 so it was not contingent on signing that agreement to get the
15 bonus.

16 Q. No. But it was contingent on her continuing to work for
17 you, which is why she resigned; isn't that right?

18 A. Say that again.

19 Q. She had to sign it to continue working for you, so she
20 resigned; isn't that correct?

21 A. I'm not sure of the question.

22 Q. Didn't Mariana resign because she had to sign the
23 noncompete agreement in order to keep working with you?

24 A. That's a question you need to ask Mariana -- not me -- her
25 reason for resigning.

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1 Q. Well, wasn't it a requirement -- didn't you require all the
2 agents to sign a noncompete to keep working for you?

3 A. I don't know why she resigned.

4 Q. I didn't ask why she resigned. I asked what you required.

5 And my question is: Didn't you require your insurance
6 agents to sign a noncompete agreement in July of 2022 to keep
7 working for you?

8 A. Not to keep working for us.

9 Q. Then why have them sign it?

10 A. Why not?

11 Q. I'm asking you. You're the one who had them sign it. I'm
12 asking why.

13 A. What is the question?

14 Q. Why have them sign the noncompete agreement?

15 A. Because it was recommended.

16 Q. It was recommended by Mr. Cueto whose law firm you hired in
17 May of 2022; isn't that right?

18 A. It wasn't recommended by Mr. Cueto.

19 Q. All right. Who was it recommended by?

20 A. General industry standards.

21 Q. All right. So there are general industry standards, and
22 they just magically popped up one day in July of 2022?

23 A. So I don't know if you recall when I mentioned earlier
24 today Florida Blue, right. They exclusively -- they do not
25 allow the agents to sell other products other than Florida

1 Blue, so that makes it an exclusivity agreement, even though
2 the agents could have been independent contractors or not. So
3 when I say industry standard, that's very common in the
4 industry.

5 Q. Okay. But that has nothing to do with what I asked you.
6 What I asked you was why, in July of 2022, you decided to ask
7 your agents or require your agents to sign a nonagreement. And
8 your answer was, It was recommended to me.

9 And my question is: Who recommended it to you?

10 A. I didn't say it was recommended to me. I said it had been
11 recommended.

12 Q. It had been recommended. Okay.

13 How did it get recommended to you?

14 A. Well, you read, you speak to other agencies and you hear
15 what they're doing, and you take it as a recommendation.

16 Q. So -- okay. And then you just created it on your own?

17 A. No.

18 Q. Who created it for you?

19 A. So Mr. Cueto's office created the document.

20 Q. Mr. Cueto's office who you hired in May of 2022?

21 A. It was around that time, yes.

22 Q. And then it was what, six months later you convert most of
23 your agents -- you have your agents now as employees, most of
24 them?

25 A. Not most of them.

1 Q. You don't have most of your agents now as employees?

2 A. It could have been 50/50.

3 Q. But back when my clients were there, it wasn't 50/50, was
4 it?

5 A. Everybody was 1099, yeah. Now we're able to offer other
6 benefits that they didn't have before, and that the sales force
7 that we have today, they do not want to be independent
8 contractors. They did not want to have control of their own
9 hours; they did not want to have their own expenses. They
10 wanted to become employees. And we lost some agents because
11 they still wanted to continue being independent contractors.

12 Q. And by not having their own expenses, what expenses are you
13 talking about?

14 A. Their own expenses?

15 Q. Yeah.

16 A. The expenses that any independent contractor would incur in
17 doing their business.

18 Q. Right. You talked about expenses that my client would
19 incur if they came to work, and you can't deduct on your taxes
20 what it takes you to go and come from work, so what expenses
21 did they have to work for you as independent contractors, as
22 you contend?

23 A. That's a question you need to ask your clients.

24 Q. So you're saying that it was better for the agents because
25 they didn't have expenses, but you don't know what expenses

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1 those are. Is that what you're telling us?

2 A. Everybody had different expenses, Mr. Pollock.

3 THE COURT REPORTER: I'm sorry. What was the answer?

4 MR. POLLOCK: Everyone has different expenses,

5 Mr. Pollock.

6 BY MR. POLLOCK:

7 Q. Understood. But you threw out there expenses, so I wanted
8 to find out what you knew. And you're saying you don't know;
9 is that right?

10 A. Right. Every agent would have their own accountings and
11 their own economics.

12 Q. And so the jury should listen to what my clients are saying
13 as far as what expenses they had to work for you if they were
14 independent contractors. Is that what you're telling us?

15 A. No, that's not what I'm saying.

16 Q. You shouldn't listen to them and hear what expenses they
17 said they had if they were independent contractors?

18 A. What is the question?

19 Q. Should we listen to my clients and hear what they have to
20 say about what expenses they had if they were independent
21 contractors?

22 A. We should listen to everybody.

23 Q. For Ms. Valiente, were you the one who opened up her
24 company for her with the State of Florida?

25 A. No. That's something she did herself. I was there to

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1 assist her in the process.

2 Q. So you were with her, telling her what to do to open the
3 company?

4 A. Yes. I have done it many times, so I could help other
5 people do the same process.

6 Q. So you told her how to open up her own company just like
7 you told other insurance agents how to open up their company
8 with the State of Florida?

9 A. No. Carlos had his own tax preparer or accountant that
10 opened up his own company.

11 Q. Okay. But for Rafaela -- for Rafaela, you opened her's
12 with her?

13 A. Yes. She asked for help, so I was there to help, of
14 course.

15 Q. And you recommended that she open a company?

16 A. No, I did not.

17 Q. I will show you what's in evidence as Page 5 of Exhibit 1.
18 (Plaintiffs' Exhibit No. 1 was identified.)

19 BY MR. POLLOCK:

20 Q. Have you seen this document before?

21 A. I'm sorry. What was the question?

22 Q. Have you seen this spreadsheet before?

23 A. I don't know if this is the one that I have seen, but I
24 have seen a similar one, yes. I don't know these numbers
25 there, what they mean, if they're actual or not.

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1 Q. Okay. According to the spreadsheet, Ms. Valiente sold
2 1,250 total policies and 1082 were Oscar. Do you see that?

3 A. Yes. That's a spreadsheet that Ms. Valiente created
4 herself.

5 Q. And so we'd expect to see on the spreadsheet that you
6 created something similar where we see how many total insurance
7 policies she sold and how many Oscar policies she sold, right?

8 A. What is the question?

9 Q. You created a spreadsheet for Ms. Valiente that you
10 created, did you not, for each year, for each enrollment
11 period?

12 A. That I created?

13 Q. Yes.

14 A. A commission statement?

15 Q. A commission spreadsheet.

16 A. Correct.

17 Q. And in that commission spreadsheet, you would say how many
18 Oscar policies and how many Ambetter policies she signed up?

19 A. Correct.

20 Q. And so those numbers should be similar to the numbers that
21 Ms. Valiente had, shouldn't they?

22 A. Yes. And if not, I would have been surprised if somebody
23 wouldn't have raised a question, right.

24 Q. Yes, they would've been close.

25 And so Ms. Valiente on her spreadsheet has 1082 Oscar

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1 policies, and then you said you created your own spreadsheet,
2 your commission spreadsheet.

3 MR. TROPP: I'm sorry. I don't mean to interrupt, but
4 can we see the whole spreadsheet? Because I have that same
5 document with different numbers.

6 MR. POLLOCK: It's the next page. It's the next page.

7 MR. TROPP: The next page?

8 MR. POLLOCK: The page before.

9 MR. TROPP: Do you have it in full, that page?

10 MR. POLLOCK: I have what was produced. This is the
11 document that was produced.

12 MR. TROPP: Okay.

13 BY MR. POLLOCK:

14 Q. So as far as paying out bonuses and commissions, is it true
15 that you relied on your spreadsheet to pay bonuses and
16 commissions?

17 A. On my spreadsheet?

18 Q. Yes.

19 A. Meaning?

20 Q. Well, you created a spreadsheet, did you not?

21 A. A commission statement, yes.

22 Q. Okay. Well, it's confusing because we have a commission
23 statement from the insurance company and then we have your
24 commission statement. But your commission statement is a
25 spreadsheet?

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1 A. No. It's a commission statement as well. We would call a
2 commission statement from an insurance company a commission
3 statement produced by Avant. Is that fair?

4 Q. Sure. And the commission statement produced by Avant is in
5 Excel?

6 A. In Excel. And the one by the insurance company is also in
7 Excel.

8 Q. And so we have this commission statement from Avant, and we
9 have it for our clients, and we have what you produced in the
10 case. It looks like it's Exhibit 12. All right.

11 (Plaintiffs' Exhibit No. 12 was identified.)

12 BY MR. POLLOCK:

13 Q. Is that what you produced? It's got a summary, deposits,
14 insurance companies, how much is paid by each insurance company
15 all the way through to Molina, Oscar and UnitedHealth. Do you
16 see that?

17 A. I see it.

18 Q. Okay. And then when we get to Oscar, you see at the top
19 there is a bunch of cells there hidden. Do you see that? I
20 don't know why they are hidden. You just have to pull them out
21 and extend. Do you see that? It goes from 1 to 220 something.

22 A. Correct.

23 Q. And then, again, at the bottom, if you go down, it jumps
24 from 304 to 1,090, and, again, there's a bunch of cells that
25 are hidden. Do you see that as well?

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1 A. Yes. Is this an Excel document?

2 Q. Yes. It's a document that was produced.

3 A. Yeah, if something is hidden, it's very simple to unhide
4 it.

5 Q. Okay. And we'll go through that.

6 And then we have here -- it starts with Mariana, goes to
7 Rafaela, a couple Marianas.

8 A. These two are Rafaela and Mariana.

9 Q. Yeah. I mean, so what I've gone and I've done is I unhid
10 all of these, and I sorted them by name and by color. So we
11 have the same -- it starts at No. 1. We have 16 and 17. And
12 on yours, 16 and 17. It goes back up to 1.

13 So what I did was I sorted it. And I color coded it just
14 to make it easy because it's a spreadsheet and it's easier to
15 see whose is what.

16 The next thing that I did was I calculated based on how
17 many lives -- which would be members, right? Lives are members
18 that are enrolled?

19 A. Correct.

20 Q. And so we have different numbers because sometimes it's
21 somebody who's just enrolling themselves; other times, they are
22 enrolling a family, family members.

23 A. What is the question?

24 Q. Well, we have under lives, which are members -- we have
25 different numbers. Sometimes it's one, two, three, four.

1 Those numbers are how many people in the family enroll in that
2 insurance plan?

3 A. Correct.

4 Q. So we go down, and for Mr. Lopez, he had 570, according to
5 your spreadsheet, because we added up in Column B all the way
6 from No. 2 to No. 336 and he has 570 total members enrolled.

7 Do you see that?

8 A. I see 570.

9 Q. All right. And you see the formula where it's -- you're
10 adding up 2 to 336. Right? You know how to sum up on Excel?

11 A. Yes.

12 Q. And that's the formula you use to get how many members.
13 And we just do that again for Delio. 507, same formula. 337
14 and 638. The next one will be 639 -- 639 to 1065. And Mariana
15 had 688. And then we get to Rafaela. 1066, all the way
16 down -- 1066 to 1617 and she has 857. Do you see that?

17 A. Correct.

18 Q. And so there's a difference between the 857 members that
19 you have and the 1,082, right? You see there is a couple
20 thousand -- couple hundred people difference?

21 A. They are different, yes.

22 Q. What I did was instead of having to go through this every
23 time, we said, Okay. Carlos was 570; Delio was 507; Mariana,
24 688 and Rafaela was 857. Those are the same numbers taken
25 over.

1 And you already told us that it's important to be exact in
2 your spreadsheet so that it's down to the dollar, right? It's
3 not fair to take any money from anybody at work, right? You
4 agree with that?

5 A. Correct.

6 Q. So the next step for us to do is -- we can do this
7 together, right. If we go to -- we can go to summary for how
8 much the different insurance companies paid. Let's just use
9 Oscar. So let me get rid of -- let me hide these columns.

10 So now we have how much you paid to each of my clients for
11 Oscar. I will zoom in on that. It's easier to see. Okay.

12 So this is how much was paid, and Mariana's is 47,000. So
13 let's take a look at how we got here. So the next thing we do
14 is look at how many policies, how many members because that's
15 how we determine how much everybody is going to get paid.
16 Because for Oscar, it's \$35 per member. Do you agree with
17 that?

18 A. Yes.

19 Q. So what we do is -- let's see how many members each person
20 has. So for Carlos, he has 570, according to your records.
21 For Delio, he's got 507. For Mariana, according to your
22 records, she's got 688. And for Rafaela, she's at 857.

23 The next thing that we do is to figure out how much they
24 should've been paid, we take the number of members times 35.
25 Do you agree with that?

1 A. No.

2 Q. No, it's not times 35? Why is that?

3 A. Because not all the company pays for all the members. We
4 also have to check if any policy has more than five members
5 because those should have been deducted. You only pay up to
6 five members. So if you apply a filter to Column B and look
7 for everything that is five or above, that's a confirmation.
8 It's the right filter. That's it, yeah.

9 Q. It should be already filtered because this should have --

10 A. I think you have the filter on. You should be able to
11 click on it, and it will tell you -- exactly. There you go.

12 So, for example, the one that says six should have been
13 five and the one that's seven should have been five.

14 Q. Okay.

15 A. No, five is five.

16 Q. Same numbers.

17 A. If it's the same number, then you did something wrong with
18 your formula, Mr. Pollock. But you use some records and these
19 two add up to the same number. There is no logic in that. But
20 your formula is still adding those numbers that you selected
21 from the filter. Now, I'm not saying to not count them. I'm
22 saying to count them for five, not for six or for seven, for
23 compensation purposes.

24 Q. Okay.

25 A. You should not exclude them as well.

1 Q. You don't have them on there. So what we have is Carlos at
2 570; Delio, 507; Mariana, 688 and Rafaela at 857.

3 A. Right. And that's inaccurate.

4 Q. And so then we have how many members times 35 a member.
5 The numbers are different. And for Mariana, we know that's
6 because she had her bonus, and the numbers are still different.

7 And you're saying that's because there were that many
8 families with five members or more than five members?

9 A. They don't pay for more than five members.

10 Q. All right. And so when we looked at this spreadsheet, we
11 did not identify anybody who had six or seven members in the
12 family.

13 A. So on the first account, there seems to be a \$140
14 difference. A discrepancy, I will call it; a better word for
15 it. On the second one, there is a \$600 discrepancy. On the
16 third one, there's a 1,215 discrepancy. And on the third [sic]
17 one, about a \$700 discrepancy. Yeah.

18 Q. But discrepancy is okay?

19 A. Say again.

20 Q. What discrepancy do you believe is okay?

21 A. What is the question? I don't know.

22 Q. The question is: What discrepancy do you believe is okay?

23 A. A discrepancy is a discrepancy. We will have to
24 cross-check the formula in order to resolve the discrepancy.

25 Q. Do you agree with me there shouldn't be a discrepancy?

1 A. Correct. I don't have the spreadsheet myself to walk you
2 through it.

3 Q. As far as the agents who are now paid as employees, did
4 they work out of your office?

5 A. As far as?

6 Q. Do they work out of your office, the agents who you now pay
7 as employees?

8 A. They work out of the office for the most part.

9 Q. Do you pay for their parking?

10 A. No.

11 Q. They don't have parking passes to get into the office?

12 A. They have a key card, but it's included with our agreement
13 with the building.

14 Q. And it's built into your lease?

15 A. Say again.

16 Q. The cost of parking --

17 A. Yes.

18 Q. -- is built into your lease?

19 A. Yes.

20 Q. They use your desks? They sit at your desks in your
21 office, the agents?

22 A. They stay at the office, yes.

23 Q. And then the computers that we're talking about, back in
24 the Kendall office and the Doral office, the computers would
25 have two monitors; is that right?

1 A. Most of them did have two monitors, yeah.

2 Q. And that's the same whether they were paid -- the agents
3 were paid as independent contractors or employees; am I
4 correct?

5 A. What is the question?

6 Q. It didn't matter if they were paid as an independent
7 contractor or an employee, they would still get a computer with
8 two monitors?

9 A. Yeah. There will have been a difference. The employees,
10 they're not allowed to change their own headset. They're not
11 allowed to bring their own mouse. They're not allowed to bring
12 their own keyboards. They're not allowed to switch monitors.
13 They're not allowed to switch from their workstation and change
14 their seat. They have to sit at the workstation that they
15 cannot switch up.

16 So those are the differences. They're not allowed to pick
17 their own schedule either.

18 Q. So they couldn't bring their own headset, mouse or
19 keyboard?

20 A. Say again.

21 Q. Couldn't bring their own headset, mouse or keyboard?

22 A. Employees, no.

23 Q. And that's the main difference, right?

24 A. No, it's not the main difference. It's one of many.

25 Q. Okay. The other difference is what you're saying, that

1 they can't pick their own schedule?

2 A. Say again.

3 Q. The employees aren't allowed to pick their own schedule?

4 A. That's another difference. They have to be at the office
5 at the time we tell them they have to be there. If they don't
6 go at that time, there's going to be some disciplinary actions.

7 When you're an independent contractor, it's very different.
8 You don't show up; nothing happens to you. You show up late;
9 nothing happens to you. You decide to leave early; nothing
10 happens to you. You don't want to go because you want to stay
11 home; that's fine. Nothing happens to you. You're free to go
12 on and off as you want. As an employee, that is not the same.

13 Q. Didn't you have schedules that my clients had to follow?

14 A. That they arranged amongst themselves.

15 Q. Well, my question was: Didn't your company send out
16 schedules to my clients that they had to follow?

17 A. They didn't have to follow it.

18 Q. You just sent them out for fun?

19 A. So you say you were going to be here at 8 a.m. and
20 everybody said that we're going to be here 8 a.m., so we put
21 everybody's name down on 8 a.m. That doesn't mean that they
22 actually did show up at 8 a.m., right. Or if they left
23 early --

24 Q. Well, it was your expectation that they were going to be
25 there, wasn't it?

1 A. What was?

2 Q. It was your expectation that they were going to be there
3 when you scheduled them?

4 A. Not really because I wasn't even scheduling them. So I
5 don't know what you're referring by that.

6 Q. You, meaning your company. You had Ms. Ledesma scheduling
7 them, didn't you?

8 A. She did not schedule them.

9 Q. They made their own schedules?

10 A. They made their own hours, Mr. Pollock.

11 Q. They made their own hours?

12 A. Yes.

13 Q. There was no requirement that they be at the call center
14 during open enrollment from 9 a.m. to 9 p.m.?

15 A. It wasn't my requirement, Mr. Pollock.

16 Q. And it wasn't your requirement that they be there on
17 Saturdays from about 9 or 10 a.m. until about 2 or 3 in the
18 afternoon on Saturdays?

19 A. So let me tell you what happened on Saturdays. They wanted
20 to try Saturdays out to see if they could make more money, so I
21 guess they went ahead and tried it out. And then they decided
22 that they did not want to work Saturdays because they did not
23 sell as much. So they did not continue selling on Saturdays.

24 A few of them wanted to. The other rest of the agents, they
25 did not want to call Saturdays.

1 Q. When they were working from 9 to 9, you knew that they were
2 working those hours during opening enrollment, didn't you?

3 A. No.

4 Q. No? You couldn't even tell that they were working 9 to 9,
5 could you?

6 A. Correct. I couldn't even tell you if they were at the
7 office or not.

8 Q. I mean, you could tell if you were sitting in there, right?

9 A. If I happen to see somebody, yes. That doesn't mean that I
10 was paying attention who was at the office and at what time.

11 Q. But you're not telling us that you had no idea the hours
12 that my clients were working, are you?

13 A. Correct.

14 Q. So you do know the hours they were working?

15 A. Say again.

16 Q. Do you or don't you know the hours that my clients were
17 working during open enrollment?

18 A. I do not know the hours that they were working during open
19 enrollment.

20 Q. And, frankly, you didn't care because you weren't paying
21 them by the hour; isn't that right?

22 A. No. It's not because of that.

23 Q. And what is it because of?

24 A. I didn't know the hours.

25 Q. Okay. The insurance agents who were employees, they still

1 use Avant's phone system, do they not?

2 A. What is the question, please?

3 Q. The question is: Don't the employees use Avant's phone
4 system just like my clients did?

5 A. They use what?

6 Q. The phone system.

7 A. The CRM?

8 Q. The CRM is part of it, right?

9 A. Yes. That's how they place phone calls.

10 Q. And then the phone system is part of the CRM?

11 A. It's integrated. And while your Plaintiffs were working
12 with Avant, they were also using their own cell phones. Now
13 that we have employees, they're not allowed to bring their own
14 cell phones in their workstations.

15 Q. Well, the cell phones that they were using are different
16 than how they would get calls through Radiusbob; isn't that
17 right?

18 A. They were also placing phone calls through their cell
19 phones.

20 Q. They were placing phone calls through their cell phones.

21 A. Right. And through the platform, both.

22 Q. But through the platform, they would receive calls, right?

23 A. They would receive calls and to place calls, both.

24 Q. But through their cell phones, they didn't receive calls
25 through Radiusbob. They only received them through the

1 computer?

2 A. I'm sure there are certain points somebody would receive a
3 phone call that was generated by one of the lead vendors to
4 their cell phone.

5 Q. How are you sure?

6 A. Because there were times that we had glitches in the CRM
7 that the phone wasn't working properly. So it could have been
8 that one of them or two of them may have received a phone call
9 or not. I cannot ascertain whether they have or not, but it's
10 a possibility.

11 Q. Okay. So you're saying you don't know?

12 A. What?

13 Q. You don't know for sure?

14 A. Yeah. I know that we used the cell phone. That doesn't
15 mean that I know if they took phone calls coming from Radius in
16 their cell phones.

17 Q. And you don't know if they were using their cell phones for
18 work, do you?

19 A. What's the question?

20 Q. You don't know if they were even using their cell phones
21 for work or personal, do you?

22 A. I know they were using them for work at some point. But
23 they have their own referrals, their own clients, friends and
24 family, and they were placing those calls through their cell
25 phones.

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1 Q. So of the thousand or 2000 insurance members they placed,
2 there were -- what? -- 10, 15 family friends?

3 A. I don't know, Mr. Pollock.

4 Q. All right. You're not saying that most of their work was
5 family and friends that they brought on their own?

6 A. I'm not saying that either.

7 Q. Okay. And then the employees -- the agency or employees
8 now, they still use the back-office processing and the
9 administrative work done by Avant, right?

10 A. Can you please repeat the question?

11 Q. Sure. The employees at Avant, they still have your company
12 doing the customer service in the back-office; isn't that
13 correct?

14 A. Yes.

15 Q. As far as all the accounting for the commissions, that's
16 all done by Avant still, isn't it?

17 A. As far as?

18 Q. The commissions.

19 A. Right.

20 Q. The commissions are still done for the agents by Avant?

21 A. That's correct.

22 Q. What's your e-mail address at work?

23 A. RCortes@AvantAssurance.com. You need a spelling on that?

24 Q. That's okay. Thank you.

25 A. Okay.

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1 Q. As far as you know, you agree that none of my clients
2 signed an independent contractor agreement with the company?

3 A. Correct. They didn't sign one.

4 Q. At the beginning of open enrollment, my clients would not
5 have had any money coming in, would they?

6 A. Your clients what?

7 Q. Would not have any money, any income from commissions.

8 A. Yes, they would.

9 Q. Well, wouldn't you also pay advances on commissions?

10 A. I also paid them some advances, good faith advances,
11 correct.

12 Q. And so you would pay advances of how much to my clients
13 when they started working for you for open enrollment?

14 A. By how much, I don't recall, to be honest. And they also
15 received commission from Sure Bridge directly in their bank
16 accounts. It's a supplemental insurance company that sells
17 dental, vision, accident plans, and they get paid weekly, twice
18 a week.

19 Q. Well, let's take a look at Exhibit No. 13, the spreadsheet
20 that you -- let's take a look at that. That's in evidence for
21 Carlos Lopez for January of 2022.

22 (Plaintiffs' Exhibit No. 13 was identified.)

23 BY MR. POLLOCK:

24 Q. Do you recognize this document as the commission
25 spreadsheet or statement that you prepared for Mr. Lopez for

1 January of 2022?

2 A. Yes. It's a similar format. It could be the same
3 document, yes.

4 Q. So this was the Oscar spreadsheet that you prepared for
5 Mr. Lopez which indicates an advance of \$11,000. Do you see
6 that?

7 A. Okay. Yes.

8 Q. And so how much were you paying Mr. Lopez as an advance
9 towards the commissions that he was earning every month?

10 A. What is the question?

11 Q. How much were you paying Mr. Lopez every month as an
12 advance on his commissions?

13 A. So there wasn't, like, a secret or a special formula to
14 that. I was very concerned about them not getting paid for two
15 months, November and December, and then January, but that's how
16 insurance works. You produce a policy today and, like you said
17 at the beginning, it could be 60 days before you get paid.

18 So based on the number that they were inputting themselves
19 into the spreadsheet and into the CRM, I provided a good faith
20 advance to them. I have been in their shoes before with no
21 advances, and I didn't want that for them.

22 Q. So for this, for Carlos, who you considered an independent
23 contractor, you paid him in advance of \$11,000 over two months.
24 Is that what you're saying?

25 A. I don't know if it was for two months or for one month.

1 The period isn't necessarily clear in here by looking at this
2 statement.

3 Q. Do you know when Mariana resigned from working for you?

4 A. If I know what?

5 Q. When Mariana resigned.

6 A. July 2022, I believe.

7 Q. Do you know what date?

8 A. I know it was a Monday.

9 Q. And in the opening statement, your lawyer mentioned a cease
10 and desist letter. You agree that that letter went out to
11 Ms. Lopez and her brother Carlos Lopez after Mariana resigned
12 and after Carlos left?

13 A. Correct. It was after.

14 Q. And so everything that happened as far as that cease and
15 desist letter would've started to occur after they left working
16 for you?

17 A. Yes. So apparently when she left from us --

18 Q. Answer my question. You said yes.

19 A. So you're going to cut me off.

20 Q. So --

21 A. Okay.

22 Q. As far as the lawsuit, the lawsuit deals with what you
23 claim Mariana and Carlos did after they stopped working for
24 you; is that right? Yes or no?

25 A. Will you allow me to answer my statement before cutting me

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1 off?

2 Q. You can answer yes or no, and then if you need to explain
3 your answer, you can go ahead.

4 A. You did not allow me to in the previous question,
5 Mr. Pollock. Let's be fair, please.

6 Q. My question was: As far as the lawsuit that you brought
7 against Mariana and Carlos, that deals with issues that arose
8 after they stopped working for you; isn't that correct? Yes or
9 no?

10 A. Can you repeat your question?

11 Q. The issues that are involved in the lawsuit that you
12 brought against Mariana and Carlos, those happened after they
13 stopped working for you; isn't that right?

14 A. Yes. That is correct.

15 Q. Okay. And so what Mariana and Carlos did after they
16 stopped working for you has nothing to do with whether you paid
17 them properly for everything. Do you agree?

18 A. A hundred percent, Mr. Pollock.

19 Q. Now, Carlos, Rafaela and Delio, they all worked for you
20 until -- when? -- about June of 2022?

21 A. Yeah, around that time.

22 Q. And that means that Delio and Rafaela worked for you for
23 about -- what? -- a year and a half, maybe a little longer?

24 A. Could have been a year and a half.

25 Q. I mean, they started, let's say, October, around about,

1 2020 until June of 2022, somewhere around there. Maybe a
2 little bit longer than a year and a half.

3 A. Yeah.

4 Q. And Mariana and Carlos, they worked for you for about
5 October until June, July, so another eight months?

6 A. Correct.

7 Q. And when they worked for you, they would come in the office
8 just about every day, wouldn't they?

9 A. No. Delio was coming only three days out of the week.

10 Q. During the open enrollment, Delio was only working for you
11 three days a week?

12 A. After open enrollment.

13 Q. After open enrollment.

14 But during open enrollment, he was there every day,
15 wouldn't you agree?

16 A. I would think so because they wanted to be there every day,
17 of course.

18 Q. And then there was a time when Carlos asked you to be able
19 to work from Colombia. Do you remember that?

20 A. He said he was going to be traveling to Colombia, and he
21 asked me if he could connect from Colombia, asking me about the
22 CRM. I said, Yes, if you have your credentials, you can do it
23 from anywhere you want.

24 Q. Was there a time that the office was closed because
25 somebody had COVID in January of '21 or '22?

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1 A. If it was closed?

2 Q. Yes.

3 A. No.

4 Q. Did anybody have to work from home in January of 2021
5 because they had COVID?

6 A. Oh, COVID.

7 Q. COVID, yes.

8 A. Yeah. They got COVID and they said that they wanted to
9 make some compensation and they wanted to work from home
10 because even though they had COVID, they were still feeling
11 okay to work.

12 Q. Okay. Let's see. Within your company, you're the one who
13 decided that you wanted to fire Delio; is that right?

14 A. He tried to assault a former employee at the company.

15 Q. My question was whether you decided to terminate Delio.

16 A. Yes. As I stated before, he tried to assault an employee
17 at the company. I had no choice, even though he's married to
18 my mom.

19 Q. And you previously worked with Delio at a hotel, right?

20 A. Correct. And I used to would consider him my best friend.

21 Q. What hotel did you work at?

22 A. Trump National in Doral, Mr. Pollock.

23 Q. And before that, you were at La Quinta?

24 A. What?

25 Q. Before that, you worked at the La Quinta?

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1 A. Before that -- no, that was after.

2 Q. You worked at La Quinta after you worked at Trump --

3 A. I believe so, yes.

4 Q. All right. And you said that Delio is basically married to
5 your wife [sic]? Not legally married, but they were in a
6 relationship together?

7 A. They've been together for years.

8 Q. Before this lawsuit was filed, your mom lived with you at
9 your home?

10 A. No.

11 Q. No.

12 A. I haven't lived with my mom since 2013 when I got married
13 with Andrea.

14 Q. This lawsuit has impacted your relationship with your mom,
15 hasn't it?

16 A. Say it again.

17 Q. This relationship -- this lawsuit affected your
18 relationship with your mom, hasn't it?

19 A. No, it hasn't.

20 Q. No.

21 A. Today she sent me a message that she is praying for me, by
22 the way.

23 Q. Okay. Do you let your mom see her grandchild?

24 A. Say again.

25 Q. Is your mom allowed to come over to your house and see her

1 grandkids?

2 A. So she travelled to Cuba with Delio last week, and before
3 she went to Cuba, she went to my house. She spent the whole
4 day with us. Why?

5 I cannot hate my mom, Mr. Pollock, for being with Delio. I
6 don't hate Delio either.

7 Q. And you say that Delio threatened a coworker?

8 A. Yes. A very unfortunate situation.

9 Q. And that's not something you were present for, was it?

10 A. No. We had many people in a Zoom meeting where he
11 expressed that he wanted to try to assault the former employee.

12 Q. At least that's what you understood it to be, right?

13 A. Say again.

14 Q. That's what you heard?

15 A. I was there in the meeting.

16 Q. And so that's the reason why you fired Delio?

17 A. Unfortunately, yes.

18 Q. And then you fired Carlos too, didn't you?

19 A. Yes. The day before the meeting, Carlos did exactly the
20 same thing to the same employee.

21 Q. And then within about a week or two later, Mariana gets her
22 bonus, right?

23 A. It was probably like two weeks after or three weeks after.

24 Q. And when that bonus comes in to your agency from Oscar, you
25 treated yourself, didn't you?

1 A. Say again.

2 Q. You treated yourself when the bonus came in from Oscar,
3 didn't you?

4 A. What does that mean?

5 Q. Well, didn't you go out and buy a car?

6 A. No, I did not.

7 Q. You didn't go out and buy the Ferrari right after that
8 bonus came in in about May of 2022?

9 A. I did buy a Ferrari, Mr. Pollock, but not because of that
10 reason.

11 Q. And it was in May of 2022?

12 A. Say again.

13 Q. May 2022.

14 A. Before we got the bonus. Why?

15 Q. And when do you claim the bonus came in?

16 A. Say again.

17 Q. When do you claim the bonus came in?

18 A. It was probably around July.

19 Q. When in July?

20 A. The beginning of the month, probably.

21 Q. So a week or two before Carlos is fired, Delio is fired.
22 What about Rafaela; was she fired too?

23 A. Rafaela, that's very uncertain, Mr. Pollock, the reason why
24 she's no longer with the company. At least it's uncertain to
25 me.

1 Q. So within two, three weeks of that bonus coming in, they're
2 all fired except for Mariana?

3 A. Correct.

4 MR. POLLOCK: I think that's all I have.

5 THE COURT: Thank you.

6 Cross-examination?

7 MR. TROPP: Reserve. We'll call him back.

8 THE COURT: Very well.

9 Mr. Cortes, you may step down.

10 (Witness temporarily excused.)

11 THE COURT: Plaintiff's next witness.

12 MR. POLLOCK: I'm going to call Jennifer Manjarres. I
13 don't know if she's here yet.

14 MR. CORTES: She was supposed to be here at 4 o'clock.
15 That's what she was told.

16 THE COURT: Next witness.

17 MR. POLLOCK: Everybody else needs an interpreter,
18 Your Honor. I was expecting there would be some kind of cross.

19 THE COURT: Why don't we give the jury a brief
20 restroom break.

21 We'll take a ten-minute recess. Please don't discuss
22 the case.

23 MR. POLLOCK: Thank you, Your Honor. My apologies.

24 COURT SECURITY OFFICER: All rise for the jury.

25 (The jury exited the courtroom at 3:32 p.m.)

1 MR. POLLOCK: Your Honor, I do expect we'll be done
2 early today.

3 THE COURT: We're going late. We need to move the
4 trial along. I have a case I need to pick a jury on Wednesday
5 afternoon.

6 MR. POLLOCK: Let me call and see if I can get an
7 interpreter.

8 THE COURT: Sounds good.

9 And I have Mr. Condon here. I asked him to come back
10 and let you all know his conversation with one of the jurors
11 when they first went back into the jury room prior to lunch.

12 THE COURTROOM DEPUTY: So after I showed them how to
13 get back into the courtroom, I walked with them all to the
14 elevators. And one gentleman stayed back, Mr. Caballero, and
15 he was saying that he doesn't know why he was picked because he
16 doesn't understand what's going on basically on either side.
17 That was about the extent. I told him I would let everybody
18 know.

19 THE COURT: Thank you, Warren.

20 THE COURTROOM DEPUTY: You're welcome, Judge.

21 THE COURT: We will take a ten-minute recess.

22 (A recess was taken from 3:33 p.m. to 3:42 p.m.)

23 THE COURT: I thought we were proceeding with
24 Ms. Gonzalez Quintero as your next witness. No. All right.

25 MR. POLLOCK: It was Ms. Manjarres.

1 THE COURT: How do you spell that?

2 MR. POLLOCK: M-A-N-J-A-R-R-E-S.

3 THE COURT: Okay. She's not here yet? Oh, she's
4 here. Very good.

5 MR. POLLOCK: But, Your Honor, we're going to finish
6 early, and I haven't been able to secure an interpreter yet.
7 She does not need an interpreter.

8 THE COURT: Right. Are you going to have her testify?

9 MR. POLLOCK: Yes, Your Honor, but I don't think it's
10 going to take the next several hours. So we may --

11 THE COURT: So we'll have Ms. Manjarres and then
12 Ms. Gonzalez Quintero.

13 MR. POLLOCK: Ms. Gonzalez Quintero testified through
14 a translator --

15 THE COURT: As well.

16 MR. POLLOCK: That's what everybody else did. And so
17 I was anticipating cross-examination today and then tomorrow
18 start with the Plaintiffs, not -- go through three of the
19 Plaintiffs tomorrow and if we can get to the fourth, great. If
20 not, that's what we were looking at because everybody else, I
21 think, is through an interpreter.

22 THE COURT: Let's proceed with the cross-examination
23 of --

24 MR. POLLOCK: Mr. Cortes?

25 THE COURT: Yes, of Mr. Cortes.

1 MR. POLLOCK: Okay. Thank you, Your Honor.

2 MR. CUETO: I think counsel is in the restroom.

3 (Pause in proceedings.)

4 MR. POLLOCK: If we're going to do the cross now of
5 Mr. Cortes --

6 THE COURT: No. We'll handle the witness who came in
7 so she can leave and then we'll --

8 MR. POLLOCK: Okay. Perfect.

9 THE COURT: Mr. Tropp, the interpreter is needed for
10 the remaining witnesses for trial other than this witness,
11 Ms. Manjarres. So we'll hear from her now, and then we'll pick
12 up with your cross-examination of your client so as not to
13 waste time, okay?

14 MR. TROPP: Okay, Judge.

15 THE COURT: Let's bring the jury in, please.

16 Ms. Manjarres, if you would approach, please.

17 (The jury entered the courtroom at 3:45 p.m.)

18 THE COURT: Everyone, please be seated.

19 Ma'am, if you could raise your right hand.

20 (Time 3:46 p.m.)

21 JENNIFER MANJARRES,

22 a witness for the Plaintiffs, testified as follows:

23 THE WITNESS: Yes.

24 THE COURT: Please be seated. And please state and
25 spell your name.

1 THE WITNESS: First name, Jennifer, J-E-N-N-I-F-E-R;
2 last name, Manjarres, M-A-N-J-A-R-R-E-S.

3 DIRECT EXAMINATION

4 BY MR. POLLOCK:

5 Q. Ms. Manjarres, my name is Brian Pollock. We haven't met.
6 I represent the Plaintiffs -- Delio, Mariana, Rafaela and
7 Carlos.

8 Where do you currently work?

9 A. I work at Avant Assurance.

10 Q. And what's your position there?

11 A. Office administrator.

12 Q. You started working at Avant in, what was it, May of 2022?

13 A. April of 2022.

14 Q. Were you hired as an executive office administrator?

15 A. Yes.

16 Q. When you were hired, was that by Mr. Cortes?

17 A. Yes.

18 Q. Did you also interview with Ms. Gonzalez Quintero?

19 A. Yes.

20 Q. Was that one interview, or was that a series of interviews?
21 In other words, did you just interview with both of them once
22 or did you have to come back?

23 A. I interviewed once with both of them.

24 Q. And then how long after the interview were you hired?

25 A. I would say a week, a week to ten days.

1 Q. When you were hired, you were hired as a 1099 independent
2 contractor; is that right?

3 A. Yes.

4 Q. And at the time that you started working at Avant in April
5 of 2022, was everyone else there also a 1099 contractor? At
6 least they were paid that way.

7 A. I couldn't tell you.

8 Q. All right. You were full-time when you started; is that
9 right?

10 A. Yes.

11 Q. And you worked in the office?

12 A. Yes.

13 Q. And then you keep files on the agents and the employees
14 there as part of your job, do you not?

15 A. Yes.

16 Q. And then as far as your job duties, have they pretty much
17 been the same since you started?

18 A. Basically, yes.

19 Q. As part of those job duties, you managed Mr. Cortes's
20 calendar?

21 A. Yes.

22 Q. And you onboard new hires?

23 A. Yes.

24 Q. And you made travel arrangements?

25 A. Yes.

1 Q. Anything else that you do?

2 A. Phones, messages, coordination of meetings.

3 Q. And when you talk about onboarding new hires, is your role
4 in the training or is your role in the paperwork?

5 A. Paperwork.

6 Q. So when you started in April of 2022, you would have
7 everybody complete a 1099?

8 A. Ah, yes.

9 Q. And then at some point -- was it in May or in June that you
10 were converted from an independent contractor to an employee?

11 A. That's correct.

12 Q. At that time, am I correct in my understanding that your
13 job duties didn't change; the only thing changed is how you
14 were paid?

15 A. I mean, job duties always -- I mean, in my role, job duties
16 can change in a minute.

17 Q. I mean, for practical purposes, your job duties evolved,
18 but it's not like you shifted from working in one place to
19 working in another?

20 A. The position stayed the same.

21 Q. And what changed was now Avant started having employees,
22 right? You were employee No. 1?

23 A. I was employee No. 1.

24 Q. Fast forward to today, Avant has about 20 insurance agents?

25 A. Just about.

1 Q. Of the 20 insurance agents that work for Avant, how many
2 are W-2 employees?

3 A. As of today?

4 Q. Yes.

5 A. They all are.

6 Q. So the flip side of that would be, as far as you understand
7 it, there are no agents who are 1099s at Avant anymore?

8 A. No.

9 Q. That switch that happened from paying agents 1099 to
10 employees, that happened what, November 1st of this -- of last
11 year?

12 A. Yes.

13 Q. And were you responsible for making that switch with the
14 agents?

15 A. When you say responsible --

16 Q. Well, I mean, did you go ahead and have them fill out W-2s
17 so they could be paid like employees?

18 A. Documents, yes.

19 Q. And then was the way that they were paid any different? In
20 other words, did you start using Paychex as a payroll provider
21 or was Paychex always payroll?

22 A. Paychex was our provider.

23 Q. Was Paychex -- I'm sorry. Was Paychex your provider since
24 when you started in April of 2022, or did Paychex start being
25 the payroll provider afterwards?

1 A. Afterwards.

2 Q. How long after?

3 A. I couldn't tell you.

4 Q. I mean, if you became an employee about four weeks after
5 you started -- so that would be sometime in May -- is that when
6 Paychex -- you started using Paychex?

7 A. Yes, could've been.

8 Q. Now, the transition that we're talking about is setting
9 everybody up in Paychex so that they could log in there and
10 manage how they get paid as far as direct deposit?

11 A. Manage the way they get paid?

12 Q. Well, they can put in their direct deposit information.

13 A. I would enter their direct deposit information.

14 Q. And would you set up all the agents and the other employees
15 at Avant so they could log in and out of Paychex?

16 A. Yes.

17 Q. Because now Avant pays its insurance agents as employees,
18 isn't it true that everybody, all the agents, have to log in
19 and log out of Paychex?

20 A. To my understanding.

21 Q. To your understanding yes?

22 A. I don't handle payroll, so I don't want to say the wrong
23 answer. I know that we use Paychex, but I couldn't tell you if
24 they log in, log out. That's not in my control.

25 Q. Do you know if the agents use a punch in or punch out

1 time-keeping system?

2 A. I do not.

3 Q. Now, about a month ago, do you remember giving a deposition
4 in this case by Zoom?

5 A. Yes.

6 Q. And in that deposition, did you have the court reporter
7 have you raise your hand and swear to tell the truth?

8 A. Yes.

9 Q. And at the time, did you understand that the testimony that
10 you were giving in your deposition is the same as the
11 deposition -- the testimony that you're giving here today is
12 the same oath?

13 A. Okay.

14 Q. You understood that?

15 A. Yes.

16 Q. And the testimony that you gave a month ago, that was true
17 and correct and we can rely on that, can't we?

18 A. Yes.

19 Q. Okay. And so when Mr. Cummings, my associate, took your
20 deposition and he asked you on Page 31, Are the insurance
21 agents hours at work recorded?, and you answered, I don't know,
22 and then he said, Okay. Do you know if they use a punch in or
23 punch out time-keeping system?, and your answer at Line 22 was,
24 I believe they use a clock in clock out system, is that an
25 actual, physical clock in clock out system or is it on a

1 digital computer? It's on a digital platform.

2 So the clock in system and the clock out system that the
3 insurance agents now use, is that the Paychex system?

4 A. Yes.

5 Q. So now -- I say now. As of November 1st of 2022, Avant
6 tracks the hours that its insurance agents work and it pays
7 them as employees. Am I correct in that?

8 A. Yes.

9 Q. Are there hours that the insurance agents at Avant
10 typically work?

11 A. I don't know.

12 Q. Well, what time do they have to be at work in the morning?

13 A. I don't know. I don't create their schedules.

14 Q. Do you remember in your deposition when Mr. Cummings asked
15 you at Page 30, What time do insurance agents have to be at the
16 office to start work, and your answer on the following page
17 was, In the morning. It's 9 a.m.?

18 Do you remember being asked that question and giving that
19 answer?

20 A. No.

21 Q. And you usually start work around 9, 9:15, don't you?

22 A. I do.

23 Q. And do you work out of an office?

24 A. Yes.

25 Q. And do you work out of one of the eight or nine offices

1 that have a door to close them off?

2 A. Interior office, yes.

3 Q. All right. And we also have -- we have the interior
4 office, and then also Mr. Cortes described for us that there's
5 a call center area for about 20 or so insurance agents. You
6 walk by that to get to your office?

7 A. I walk around the call center, yes.

8 Q. And when you walk in around 9 a.m., you know that you walk
9 by insurance agents who are there already working, right?

10 A. At times.

11 Q. You don't pay attention to when they work?

12 A. Honestly, I go straight to my office. There could be
13 agents; there could be other staff members. I couldn't
14 identify who I see in the 20 seconds it takes me to get to my
15 desk.

16 Q. And as far as you understand it, the insurance agents at
17 Avant now are required to log into Paychex at the start of
18 their shift and log out at the end of their shift; is that
19 true?

20 A. That's -- from my understanding.

21 Q. The insurance agents that are at Avant now after the open
22 enrollment period, they have shifts that are from 9 to 3 and 3
23 to 9. Is that your understanding?

24 A. I can't answer that because I don't manage the schedules or
25 the hours.

1 Q. Again, referring back to your deposition that was taken on
2 June 8th -- 30-something days ago -- Mr. Cummings asked you the
3 following at Page 60 to 61, and these were your answers: All
4 right. And, now, as W-2 employees, are there different shifts
5 that those insurance agents are working on? Your answer was
6 yes. Does any insurance agent work from 9 in the morning to 9
7 at night in one day? And your answer was no. Okay. Did they
8 work on a schedule from 9 to 3 and then certain agents work
9 from 3 to 9? Yes.

10 Were those the answers that you gave back on June 8th of
11 this year to those questions?

12 A. I don't recall.

13 Q. Have you suffered any events or had any medical conditions
14 or taken any medications that would affect your ability to
15 remember what you said a month ago in a deposition?

16 A. No.

17 Q. For a couple of months while you were at Avant, my clients
18 also worked at Avant; is that right?

19 A. Just a few weeks.

20 Q. A few weeks. From April until June or July, last one being
21 Mariana -- Mariana on July 11th. You worked with my clients;
22 is that right?

23 A. Yes.

24 Q. So whether that's 8 weeks, 12 weeks, whatever it is --
25 right? -- we're talking the same time period.

1 Did you see them at the office?

2 A. Yes.

3 Q. And when you started working, that was before Avant moved
4 to the Kendall office? Was it?

5 A. I'm sorry. What was the question?

6 Q. You started at Avant while you were at the Kendall office
7 before they moved to Doral?

8 A. I worked in the Kendall office, yes.

9 Q. So you saw my clients working at the Kendall office and
10 then you saw them working at the Doral office; is that right?

11 A. Yes.

12 Q. And from being in the office for over a year now, I mean,
13 you understand that the insurance agents, their jobs involve
14 sitting at a desk at a computer, logging in and taking phone
15 calls, right?

16 A. From my understanding.

17 Q. We're not getting any deeper than that, but, I mean, that's
18 what you can see and you can hear while you're at work?

19 A. I definitely can hear them.

20 Q. All right. But you can see them sitting at a desk on a
21 computer with headsets on?

22 A. Yes.

23 Q. And when you saw my clients, they were working similarly at
24 desks with computers with headsets on at Avant?

25 A. Yes.

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1 Q. The insurance agents as of November 1st at Avant have to
2 log in and out of Paychex to track the hours that they work for
3 when they start and stop working. We established that, right?
4 Yes?

5 A. I can't -- I can't answer that because I don't know if they
6 clock in or out. I don't know the platform, but they're --
7 they're using Paychex, but I don't -- I don't micromanage them.
8 I'm not their direct supervisor.

9 Q. You don't have any role with payroll?

10 A. I do not.

11 Q. We talked -- in your deposition, you were asked, at Page
12 32, The insurance agents are required to log out -- log in to
13 Paychex at the start of their shift and then log out at the end
14 of their shift?, and your answer was yes.

15 Do you remember being asked that question --

16 THE COURT REPORTER: I'm sorry. That was way too
17 fast.

18 MR. POLLOCK: And I don't drink coffee, if you can
19 believe it.

20 THE COURT REPORTER: Can you repeat it?

21 MR. POLLOCK: Absolutely.

22 THE COURT REPORTER: Thank you.

23 BY MR. POLLOCK:

24 Q. And so when you gave your deposition on July 8th by Zoom,
25 were you sitting in Avant's office?

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1 A. It wasn't July 8th.

2 Q. June 8th. I'm sorry. You're right.

3 A. I was not at the Avant office, no.

4 Q. Okay. Where were you?

5 A. I was in my home office.

6 Q. Okay. So you were at your home office, and you gave the
7 deposition by Zoom. Do you remember being asked that question
8 and giving that answer or you don't remember?

9 A. Can you repeat the question?

10 Q. Sure. The question was at Page 32. The insurance agents
11 are required to log in to Paychex at the start of their shift
12 and then log out at the end of their shift? And your answer
13 was yes.

14 Do you remember being asked that question --

15 A. Yes.

16 Q. -- and giving that answer? Okay.

17 And so as we sit here today, do you understand that Paychex
18 is just a program on their computer; it's a website that they
19 go to?

20 A. Yes.

21 Q. Do you have to log in to Paychex and log out of Paychex
22 every day at work?

23 A. Me specifically, no.

24 Q. You're salaried?

25 A. Yes.

1 Q. All right. And I'm not going to get into that.

2 Do you have any reason to believe that my clients could not
3 have logged into Paychex at the start of their shifts and
4 logged out at the start of their shifts so that Avant would
5 know the hours that they were working?

6 A. I'm not sure how you want me to respond to that.

7 Q. Just truthfully.

8 A. I don't know.

9 Q. And you said you were on salary. That means Avant's paying
10 you to be here today? You had to take a day off of work to
11 come in today. You're still getting paid?

12 A. Yes.

13 Q. I guess that's all I have. I appreciate your time. Thank
14 you, Ms. Manjarres.

15 THE COURT: Cross-examination.

16 MR. POLLOCK: I think Mr. Tropp may have some
17 questions for you, just so that way you don't have to come back
18 and to least inconvenience you.

19 THE WITNESS: Sure.

20 CROSS-EXAMINATION

21 BY MR. TROPP:

22 Q. Hello.

23 A. Hello.

24 Q. How are you?

25 A. Good. How are you?

1 Q. Good. Good.

2 You were just asked a bunch of questions about the
3 employees after they left. I guess the point was that --
4 because they're W-2 now and they're controlled, I think he's
5 making the point that these four Plaintiffs as well were
6 employees. But there is a difference --

7 THE COURT: Could you use the microphone, Mr. Tropp,
8 please?

9 MR. CUETO: One moment, Your Honor. I'm sorry to
10 interrupt. My client just was alerted from her daughter's
11 school, received a message of something and they're concerned
12 it's an emergency.

13 THE COURT: She can be excused if she would like to
14 leave.

15 MR. CUETO: Okay.

16 THE COURT: You may proceed, Mr. Tropp.

17 MR. TROPP: Thank you.

18 BY MR. TROPP:

19 Q. Is it fair to say that after these four Plaintiffs sued my
20 clients for this case that we're here today things changed at
21 Avant in terms of how employees are handled?

22 A. Since they left?

23 Q. Since they got sued -- Avant, Reinier and Andrea got
24 sued -- would it be fair to say that how employees or the
25 agents -- or the sales agents got treated changed?

1 A. No. I'm sorry. Changed in what way? The way that
2 Reinier --

3 Q. Well, let's look at the way the -- the sales agents were,
4 the arrangements were before the lawsuit.

5 A. Oh, meaning a controlling way.

6 Q. Well, I mean, before the lawsuit, was there a difference
7 then than after the lawsuit? They're W-2s now, correct?

8 A. They're W-2s now, so, yes, there is a difference.

9 Q. Right. After they got sued?

10 A. Right.

11 Q. Before they were sued, they were --

12 A. They were contractors.

13 Q. So there's a difference --

14 A. Yes.

15 Q. -- because of the lawsuit?

16 A. Correct.

17 Q. It's not that because after the lawsuit that's the way they
18 should be also factored in, correct?

19 A. Correct, yes.

20 Q. And, also, you were there also around the time where --
21 when Carlos and Delio, they were still working there at the
22 time?

23 A. Yes.

24 Q. Correct?

25 A. Yes.

1 Q. Did you ever hear that any one of these four Plaintiffs
2 left because they were forced or had to sign a noncompete
3 agreement?

4 A. No.

5 Q. Have you heard that before?

6 A. Never.

7 Q. Have you ever heard any of these four Plaintiffs from the
8 time that they were working for you come to you or tell you or
9 anyone, Hey, I'm owed any money?

10 A. No.

11 Q. Were you the office manager at the time?

12 A. Yes.

13 Q. So would that be somewhere -- regularly where someone would
14 go to you to say, Hey, I'm owed some money?

15 A. No.

16 Q. They would go to Reinier?

17 A. Correct.

18 Q. Did you ever hear them, like -- or anyone complain that
19 they were owed overtime or hourly wages?

20 A. I never heard anything.

21 Q. How would you describe -- what was the difference between
22 post their lawsuit how employees got treated and before the
23 lawsuit, before the agents, the sales agents got treated?

24 A. I wasn't there long before we transitioned to our full-time
25 agents W-2s.

1 Q. Um-hmm.

2 A. So I would see them sporadically come and go. I don't know
3 what hours they had. I don't know what arrangements they had.
4 I would see them come into the office, do their work. And,
5 honestly, I always had an interior office, so I wouldn't see
6 much.

7 Q. Okay. But now what are your current duties with Avant? I
8 mean, what's your job?

9 A. I'm an office administrator, so I handle operations,
10 licensing, calendar management, event planning, travel
11 arrangements, everything that basically an executive assistant
12 would do.

13 Q. And would you say when it comes to Avant, you know how --
14 you know about the business, you know pretty well how it
15 operates?

16 A. On the back-office on the administrative side, yes, but on
17 the sales side and technicalities, no, I do not.

18 Q. Would you agree that Avant is engaged in the selling of
19 services -- in the making of sales of -- or in the making of
20 services?

21 MR. POLLOCK: I'm going to object to relevance, Your
22 Honor. This issue was stricken by the Court.

23 THE COURT: Overruled.

24 MR. TROPP: I'm sorry?

25 THE COURT: Overruled.

1 You may answer.

2 MR. TROPP: Thank you.

3 THE WITNESS: Yes.

4 BY MR. TROPP:

5 Q. Yes.

6 And of the services, of its sales of its insurance
7 policies, would you say that 75 percent of those sales of the
8 policies were recognized as retail in this -- in that -- in
9 this industry?

10 MR. POLLOCK: Objection, qualifications and --

11 THE COURT: Sustained.

12 MR. TROPP: Okay. Let me ask you a different way.

13 BY MR. TROPP:

14 Q. Would you say that -- would you agree that -- what
15 percentage would you say of the money that Avant makes comes
16 from the sale of their insurance policies?

17 MR. POLLOCK: Frankly, Your Honor, this --

18 THE COURT: She's an office manager. Predicate.

19 Sustained.

20 BY MR. TROPP:

21 Q. Do you -- are you -- you do know about how the agents are
22 paid, correct?

23 A. Yes.

24 Q. And when I say agents, I mean sales agents.

25 A. Yes.

1 Q. Of the moneys that the sales agent get paid, would you say
2 that over 50 percent of that amount comes from commissions?

3 A. Yes.

4 MR. POLLOCK: Predicate, again, Your Honor.

5 THE COURT: Sustained. The answer is stricken.

6 BY MR. TROPP:

7 Q. What percentage -- in your experience and what you know
8 about how payments are made, what would you say is the
9 percentage of -- from the earnings that the agents get, what
10 percentage would -- comes from commissions?

11 MR. POLLOCK: Predicate, again, Your Honor.

12 THE COURT: Sustained.

13 MR. TROPP: That's all I have, Judge.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. POLLOCK:

17 Q. Ms. Manjarres, what's your e-mail address?

18 A. I'm sorry?

19 Q. Your e-mail address?

20 A. My corporate e-mail address?

21 Q. Yes.

22 A. JManjarres@AvantAssurance.com.

23 Q. All right. This will be quick.

24 Just to be clear, your position is administrative as an
25 executive assistant; is that right?

1 A. Yes.

2 Q. Meaning you don't know about how my clients are paid or how
3 the company is paid. That's all stuff that you don't handle?

4 A. Right.

5 Q. And as far as whether my clients are owed money, you're not
6 the person that they would've gone to complain about it. That
7 would've been Mr. Cortes?

8 A. No.

9 Q. No?

10 A. No, your clients would not come to me.

11 Q. Okay. And then as far as Mr. Cortes, he has his own office
12 that has a door?

13 A. Yes.

14 Q. Okay. That's all I have.

15 THE COURT: Thank you, ma'am. You are excused.

16 (Witness excused.)

17 THE COURT: Plaintiffs have no other witnesses?

18 MR. POLLOCK: For today, no, Your Honor. We're going
19 to go through with the cross of Mr. Cortes.

20 THE COURT: Ladies and gentlemen, we will adjourn for
21 the day. I'm going to ask that you all return tomorrow morning
22 at 8 o'clock. Please be gathered in the jury room by 8 a.m.
23 At that time, we will continue with the trial.

24 Please leave your notebooks and pencils in the jury
25 room. Please don't discuss this case, and avoid contact with

1 those whom you see here in the courtroom. We'll see you back
2 tomorrow morning at 8. Have a good evening.

3 COURT SECURITY OFFICER: All rise for the jury,
4 please.

5 (The jury exited the courtroom at 4:20 p.m.)

6 THE COURT: Given what I'm seeing on the Defense side,
7 I thought it best to give Defense counsel the opportunity to
8 prepare the examination of the Defendants. So let's go through
9 those remaining objections for the jury instructions, please,
10 and get the verdict form and jury instructions in final form.

11 MR. CUMMINGS: Your Honor, may my clients be seated?

12 THE COURT: Yes, of course.

13 MR. POLLOCK: Your Honor, you ready?

14 THE COURT: Yes.

15 MR. POLLOCK: Sorry. I was fumbling around.

16 We're looking at 3.7.2, affirmative defense for
17 preponderance burden -- burden of proof, and I think we seem to
18 be covering ground here because I thought last time the Court
19 had stricken the affirmative defenses, but they were reinserted
20 because the parties could not agree.

21 THE COURT: I don't believe I struck affirmative
22 defenses, no. That was not what I did. There was no Rule
23 12(f) motion, and if there are affirmative defenses pled, I was
24 asking Defense counsel what affirmative defenses did they want
25 to carry the burden of proof on at trial.

1 MR. POLLOCK: The first affirmative defense that they
2 pled involved the retail or services establishment, and so we
3 don't believe that that's appropriate in a case involving
4 insurance. I can cite to the -- cite for the Court the law on
5 that, which initially stems from *Mitchell vs. Kentucky Finance*,
6 which is a 1959 U.S. Supreme Court case where it talks about
7 when the retail service exemption was included, the 207(i), the
8 court specifically determined -- talked about how it doesn't
9 exempt banks and insurance companies.

10 And we also have CFR 779 316 that talks about how
11 transactions of an insurance company are not considered retail
12 or servicing transactions for purposes of the FLSA. And that
13 was talked about in the 11th Circuit case of *Hogan vs. Allstate*
14 *Insurance Company* at Page 626 and then again in *Merritt vs.*
15 *Texas Farm Bureau*, which was a May 16th, 2023, decision from
16 the Western District of Texas.

17 They surveyed the landscape and found that there was
18 no case that allowed -- that considered the sale of insurance
19 or insurance products to be retail or service, and so that in
20 every case, that exemption doesn't apply.

21 So we ask that the first affirmative defense be
22 removed as legally untenable.

23 THE COURT: What page of the -- of Docket Entry 95?

24 MR. POLLOCK: 19.

25 THE COURT: Page 19. Okay.

1 All right. I'll hear from Defense counsel.

2 MR. TROPP: Your Honor, that -- the case law that he's
3 referring to about not including insurance is -- it's old law.

4 THE COURT: Well, cite to me anything that supports
5 your position, please. Old or new.

6 MR. TROPP: Very well, Judge.

7 One of the specific -- in the CFR specifically, it
8 says insurance policy sales --

9 THE COURT: I'm sorry. What CFR? What CFR section
10 are you reading from?

11 MR. TROPP: I actually have it cited in the
12 instructions.

13 THE COURT: 207(1) -- or (i)?

14 MR. TROPP: Its -- 7(1) is the -- that's where it is.
15 But the CFR actually lists insurance policy sales as part of
16 goods under 7(1) -- 7(i).

17 THE COURT: Let's look at that.

18 MR. TROPP: Yes.

19 I believe I cited in the last provision -- I just want
20 to get that for Your Honor -- 7.9.317.

21 THE COURT: Let's see it.

22 MR. TROPP: Just give me two seconds, Judge. Let me
23 get the instructions. The last instruction revision, I put all
24 that in there.

25 THE COURT: All right.

1 MR. TROPP: If you just give me a minute to find it.

2 (Pause in proceedings.)

3 THE COURT: I know Mr. Pollock cited some older cases,
4 but I can cite to you one from May of this year, if the date of
5 the case is persuasive at all. And that's -- I'm not sure if
6 you cited it, Mr. Pollock -- *Merritt vs. Texas Farm Bureau*,
7 M-E-R-R-I-T-T.

8 MR. POLLOCK: Yes, Your Honor, from the Western
9 District of Texas.

10 THE COURT: You cited that one, right?

11 MR. POLLOCK: I did. That's where they surveyed the
12 law.

13 THE COURT: Right. And that was May 15, 2023. It's
14 still awaiting a F.3d cite, and the Westlaw cite is 2023
15 Westlaw 3520322. So that's fairly recent. That's two months
16 ago.

17 MR. TROPP: Right. I believe that was a case
18 involving, like -- not insurance policy sales. However, just
19 let me see if I can get this.

20 THE COURT: In fact, the court does a fairly extensive
21 review, as Mr. Pollock just mentioned, of this whole exemption.

22 MR. TROPP: Okay. So under the -- I'm having a little
23 trouble with the HDMI. I can tell you under 29 CFR 776.20 zero
24 -- 77620 zero, Subsection B --

25 THE COURT: I'm sorry. What do you mean by 20 zero?

1 MR. TROPP: 776.20, Subsection B shows that insurance
2 policies are goods within the meaning of the act, and that's in
3 the CFR. It says --

4 THE COURT REPORTER: I'm sorry.

5 THE COURT: We can't hear you. I'm not sure if you
6 want this on the record or if you're just speaking to
7 cocounsel.

8 MR. TROPP: Sorry, Judge. I'm having a little trouble
9 with the HDMI to show you, but it is in my revised copy.

10 And under 776.20 on the definition of goods,
11 specifically says insurance policies are goods within the
12 meaning of the act. And then 207(i), USC Section 207(i), and
13 29 CFR 779.412 are stating these requirements.

14 (Pause in proceedings.)

15 MR. TROPP: And your second --

16 THE COURT: I'm sorry. I think we're going to be here
17 all night if we proceed in this fashion. Have you taken a look
18 at *Merritt vs. Texas Farm Bureau* and its exhaustive discussion
19 of this issue?

20 MR. TROPP: I believe so, Judge. I might've addressed
21 that.

22 THE COURT: Trashed it?

23 MR. TROPP: I'm sorry, Judge?

24 THE COURT: You trashed it?

25 MR. TROPP: No, no. I believe I addressed it.

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1 THE COURT: Oh, you addressed it. Where?

2 MR. TROPP: It's in the instructions, Your Honor.

3 THE COURT: Would you like a copy of *Merritt*,
4 Mr. Tropp? Have you read it?

5 MR. TROPP: I have read it, Judge.

6 (Pause in proceedings.)

7 MR. TROPP: I do recall this case, Your Honor. In
8 that case, the parties did not dispute that insurance policies
9 are to be -- are included as goods as defined under 776.20(b),
10 which says insurance policies are goods. And it discusses the
11 retail concept up until, like -- up until the -- May 20th,
12 2020. I know there are some changes of appeals from the DOL.

13 (Pause in proceedings.)

14 MR. TROPP: I know that in that case, Your Honor, it
15 wasn't a question about insurance policies being considered
16 goods. In that case, there was -- it involved property,
17 automobile, homeowner's and life insurance and brokerage
18 products, and it said, Before a person could qualify for TFB
19 insurance policy, membership requirement to be a member of the
20 Farm Bureau's nonprofit arm.

21 THE COURT: Mr. Tropp and Mr. Cueto, my courtroom
22 deputy is passing to you a copy of the actual case.

23 MR. TROPP: Thank you. Thank you.

24 THE COURT: And a courtesy copy for Mr. Pollock.

25 So if you turn to discussion at Page 5, Subsection 4,

1 that's a fairly exhaustive treatment of the subject matter, and
2 I will be removing this proposed language from the jury
3 instructions unless you have anything else on the point that
4 you would like to share.

5 MR. POLLOCK: That's all the -- that's the entirety of
6 the proposed Defendants' first affirmative defense.

7 THE COURT: Right. But let's give counsel a chance --
8 Mr. Tropp and Mr. Cueto a chance to review this case law that
9 we just passed over to them.

10 (Pause in proceedings.)

11 MR. TROPP: Your Honor, if I may.

12 THE COURT: Yes.

13 MR. TROPP: Okay. It's coming to me now. And thank
14 you for being so patient. Thank you, Judge.

15 I just want to point out that in this case, it says
16 that the first two prongs were met, and then the court goes
17 into, however, the issue -- the part about the retail --
18 establishments with the retail concept. And it seems like,
19 like you said, the court is at odds about that, and then it
20 does say it's on a case-by-case approach.

21 But then on Page -- what page is this? Before the
22 discussion, it says -- it says, Plaintiffs argue this
23 regulation dispositive settles the matter exclusively. And if
24 the court were to find insurance industry as a retail concept,
25 it would still fail to show a retail concept because it does

1 not sell goods and services to the general public.

2 Plaintiff posits that the Defendants offer policies to
3 members of their related nonprofit organization and not to the
4 general insurance-buying public to a case in that case.

5 Finally, plaintiffs claim that not every person could buy Farm
6 Bureau insurance even if they wanted to because one must first
7 submit an application determining whether the Bureau wants to
8 do business with that person.

9 THE COURT: You're reading from the court's summary of
10 one of the parties' arguments.

11 MR. TROPP: Well, ultimately, it finds that because
12 the Farm Bureau didn't sell to the general public, it didn't
13 meet the third prong of the test. This was, like, an
14 underwriting company. But here, Avant sells to the general
15 public. It goes directly to the end consumer. All the other
16 elements are met. It's a good, services. It's part of the
17 retail concept.

18 But in that, that was an underwriting company for
19 insurance underwriting that did not sell to the general public.
20 It's got to go to the people. It's got to help the community.
21 It's got to be the end product. The next key about Avant
22 Assurance is it does go to the end product.

23 THE COURT: Did you read the discussion under
24 Subsection 4?

25 MR. TROPP: Subsection 4.

1 THE COURT: Mr. Pollock, would you point it out for
2 Mr. Tropp, please?

3 MR. POLLOCK: He's got it, Your Honor.

4 THE COURT: Thank you.

5 MR. TROPP: Okay. So --

6 THE COURT: Just read it to yourself, Subsection 4,
7 Pages 5 and 6.

8 (Pause in proceedings.)

9 MR. POLLOCK: Your Honor, can I step out while
10 Mr. Tropp is reading this for a quick comfort break?

11 THE COURT: Yes.

12 MR POLLOCK: Thank you, Your Honor.

13 (Pause in proceedings.)

14 MR. TROPP: I do see, Your Honor, where it says --

15 THE COURT: Let's wait for Mr. Pollock to return.
16 Thank you.

17 (Pause in proceedings.)

18 THE COURT: Please return. Are we ready to move on?
19 Are we ready to move on in the jury instructions?

20 MR. TROPP: Yes, Your Honor. But can I just make a
21 quick point? Thank you, Judge.

22 In the discussion, it says that all the cases that
23 have ruled whether insurance has a retail concept -- albeit,
24 pre-2020 -- had determined that one does not exist. I would
25 say that the big focus on this case on Page 1 -- in that case,

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1 the insurance -- before one could qualify for TFB insurance
2 policy, there was a membership requirement to be a member of
3 the Farm Bureau's nonprofit arm. So the court says that the
4 first two prongs were met.

5 It seems like there was a big problem about it not
6 being a retail concept because it wasn't available for -- to
7 the end consumer. It establishes that insurance policies are
8 goods. And, I mean, just selling these masses of -- of
9 Obamacare insurance policies, it is a retail concept. And I
10 also understand this is a Texas case, so --

11 THE COURT: Well, it's certainly not controlling.

12 MR. TROPP: Right.

13 THE COURT: It's a fairly exhaustive treatment of the
14 issue, and you have presented me with nothing contrary to that.

15 MR. TROPP: Well, I'm just saying in that --

16 THE COURT: I understand the facts are somewhat
17 distinguishable, but I'm not even going on the facts. I'm
18 going on the discussion, as I pointed out to you, and,
19 particularly, the court's reliance there on *Mitchell vs.*
20 *Kentucky*, M-I-T-C-H-E-L-L. It's a 1959 U.S. Supreme Court
21 case.

22 So I will be removing this language from the proposed
23 jury instructions. We had this discussion at the calendar
24 call, and if you had anything contrary to show me, now's the
25 time, and I don't see anything contrary to that other than your

1 recitation to CFR and I'm not sure what else. So this part
2 will come out.

3 What's the next objection so we can get these
4 instructions in final form?

5 MR. POLLOCK: It continues, Your Honor. I don't know
6 whether Your Honor's striking the entirety of the first
7 instruction because the second one talks about -- it talks
8 about one -- I guess it's the whole instruction. The next one
9 would be the Defendants acted in good faith, the second
10 affirmative defense.

11 THE COURT: All right.

12 MR. POLLOCK: It's our position there is no defense of
13 good faith. That's a defense to liquidate damages but not to
14 the imposition of liability. So it's not something that should
15 be submitted to the jury because they would confuse the issues.

16 THE COURT: Because the jury's not being asked about
17 liquidated damages.

18 MR. POLLOCK: Correct.

19 THE COURT: Right.

20 MR. POLLOCK: And there's no --

21 THE COURT: Advisory jury.

22 MR. POLLOCK: -- advisory jury because we don't have a
23 three-year statute.

24 THE COURT: All right.

25 I will hear from Plaintiffs' counsel -- Defense

1 counsel.

2 MR. TROPP: So it would be Your Honor deciding
3 ultimately the issue of liquidated damages.

4 THE COURT: The jury is not -- this is not a jury
5 issue.

6 MR. TROPP: Well, I cited the cases as to -- I mean,
7 for good faith defense. It's pretty, like, standard defense,
8 that I understand, that we could --

9 THE COURT: To what?

10 MR. TROPP: To show that --

11 THE COURT: To the FLSA?

12 MR. TROPP: Yes. To counter the --

13 THE COURT: Are any of these cases FLSA cases, the
14 ones you have cited?

15 MR. TROPP: Yes.

16 THE COURT: Which one?

17 MR. TROPP: I believe I have --

18 THE COURT: I'm sorry. Where?

19 MR. TROPP: The City of Palm Beach --

20 THE COURT: The City of West Palm Beach case?

21 MR. TROPP: No, Your Honor.

22 THE COURT REPORTER: Can you use the microphone?

23 MR. TROPP: Yes.

24 THE COURT REPORTER: Thank you.

25 (Pause in proceedings.)

1 MR. TROPP: That's fine. We can move on, Judge, if
2 the jury's not going to make that determination. We're clear
3 about that.

4 THE COURT: So all of that language on the second
5 affirmative defense is deleted.

6 Third affirmative defense, accord and satisfaction.

7 MR. TROPP: Yes, Judge.

8 THE COURT: Is there any such defense under the FLSA?

9 MR. TROPP: Well, that's the thing, Your Honor.

10 THE COURT: I suppose you're bringing it up due to the
11 breach of contract count and unjust enrichment?

12 MR. TROPP: Yes, which is two-thirds of the whole
13 thing.

14 THE COURT: All right. And what are the elements of
15 this defense?

16 MR. TROPP: That -- accord and satisfaction, that he
17 does not owe the amounts.

18 THE COURT: That's a denial. That's what the
19 Plaintiffs are saying. This is no different than denying that
20 they're owed anything.

21 MR. TROPP: It's not so much of a denial, but it would
22 shift the burden --

23 THE COURT: To you. You want to take on that burden?
24 Is that the burden your clients want to take on, or do you want
25 to leave the burden at the Plaintiffs' table? Mr. Cueto?

1 MR. CUETO: It is to the Plaintiffs.

2 THE COURT: I think you do, right. It's a denial that
3 they're owed anything.

4 MR. CUETO: That's correct.

5 THE COURT: So are we withdrawing this accord and
6 satisfaction?

7 MR. CUETO: Yes, Your Honor.

8 THE COURT: All right.

9 Fourth affirmative defense, unclean hands. That's not
10 a jury issue, is it?

11 MR. TROPP: Again, that's on the contract-based
12 claims, Your Honor, and --

13 THE COURT: Is it a jury issue?

14 MR. TROPP: It is a jury issue --

15 THE COURT: It is?

16 MR. TROPP: -- on the contract --

17 THE COURT: On anything. Is unclean hands a defense
18 that's submitted to the jury? Do you know?

19 MR. TROPP: Well, I do know that those are standard
20 affirmative defenses for contract and unjust enrichment-based
21 cases. Otherwise, I'm kind of restricted on, like, what our
22 arguments could be other than just whether or not he can meet
23 his burden or not. Like, it really restricts my --

24 THE COURT: You haven't answered my question,
25 Mr. Tropp.

1 MR. TROPP: I'm sorry.

2 THE COURT: Is it a jury issue?

3 MR. TROPP: I would say it is, Judge, because --

4 THE COURT: What do you cite for that?

5 MR. TROPP: It's a jury issue because it goes to the
6 heart of, like, the credibility --

7 THE COURT: It's an advisory. It would be an advisory
8 verdict.

9 (Pause in proceedings.)

10 MR. TROPP: I believe I cited the cases below. A
11 doctrine of unclean hands requires a showing that plaintiff's
12 wrongdoing is directly related to the claim if that plaintiff
13 was an independent contractor. And that was the *Nationwide*
14 *AutoPart* case.

15 And the doctrine of unclean hands requires a showing
16 that plaintiff's wrongdoing is directly related to the claim
17 against which it is asserted and defendants suffered a personal
18 injury as a result. The court, at a minimum, should take into
19 account plaintiff's alleged misconduct when analyzing remedies,
20 or it should, at a minimum, take into account their misconduct.
21 That's in the *Kendrick* case.

22 THE COURT: I think you're asking for an advisory
23 verdict on this defense of unclean hands, are you not?

24 MR. TROPP: I'm not sure what you mean by that, Judge.

25 THE COURT: No different than the issue of liquidated

1 damages. It's not one that's submitted to the jury either.

2 MR. TROPP: Right.

3 THE COURT: There are some matters that require a jury
4 verdict, but unclean hands is not one of them. It's an
5 equitable defense.

6 MR. TROPP: It's an equitable defense, not on the
7 FLSA, per se, which it is includable in that. But on the
8 question of whether or not there's implied or
9 nonimplied contract or there's unjust enrichment --

10 THE COURT: What is the evidence of unclean hands
11 here? I haven't heard from the Plaintiffs yet, but proffer
12 what the evidence will be.

13 MR. TROPP: Well, proffer -- I proffer that the new --
14 that after -- they basically took his clients and took the
15 company. And then the state case started once the cease and
16 desist letter came about, and it's not like I went into that.
17 Like you said, you don't want -- I didn't want -- I'm not
18 trying to do a sideshow. But they have an ulterior motive by
19 this whole wage and hour thing in this whole claim that they're
20 doing. They basically went on the offense as a defense.

21 You know, I didn't bring it up, but, like, Carlos and
22 Mariana, like, they took hundreds of clients, and now they
23 have, like, a huge Obamacare online company that basically
24 copycatted this business. And it's like -- so the jury should
25 know everything that -- they have unclean hands in this. And

1 to come here and say, Oh, we're owed hourly wages, is -- at
2 least should be considered as a remedy.

3 THE COURT: I pointed you to a few cases, Mr. Tropp
4 and Mr. Cueto, so you can look at this issue because I don't
5 think you've answered my question about whether the doctrine of
6 unclean hands is one that is submitted to the jury for a
7 verdict or consideration.

8 I'll point you to *SMK Associates, LLC, vs. Lorali,*
9 *L-O-R-A-L-I*, 2015 Westlaw 11197776, Southern District of
10 Florida, January 21, 2015, where my colleague Judge Williams
11 wrote in Footnote 2 -- in the body of her order, she wrote,
12 "However, the court did not allow SMK's jury instructions on
13 unclean hands because this is not a recognized defense to a
14 claim for damages for breach of contract. Thus, SMK's unclean
15 hands defense was not presented to the jury."

16 And at Footnote 2, she writes, "More specifically, the
17 court determined that the doctrine of unclean hands is
18 applicable only to a claim for equitable relief, not a claim
19 for damages."

20 She cites to another Southern District of Florida
21 case, and the parenthetical there that she quotes is: "The
22 unclean hands doctrine traditionally applies only to claims for
23 equitable relief or in opposition to equitable defenses.
24 Whereas here a plaintiff seeks to recover only damages, the
25 unclean hands doctrine is not applicable."

1 I will remove this from the jury instructions as well.
2 You have this evening to locate something contrary that shows
3 me that this is, in fact, a jury question, which is the issue
4 I've been asking you to address throughout our treatment of
5 this this afternoon.

6 Next issue, please.

7 MR. TROPP: Okay.

8 THE COURT: The next issue on the jury instructions.

9 MR. POLLOCK: The next issue is set-off, Your Honor,
10 the fifth affirmative defense at Page 25 of Docket Entry 95.

11 THE COURT: Fifth affirmative defense, set-off and
12 credits. Well, this is an evidentiary issue, I take it.
13 You're saying that there is no evidence that the Defendants
14 paid the Plaintiffs money that went above and beyond the wages
15 that they earned to substantiate a claim for set-off.

16 MR. POLLOCK: Correct. Because under the FLSA,
17 that's -- the only way that set-off can occur is payment above
18 and beyond the wages. In this case, it's kind of antithetical
19 because the claim is, We didn't get paid the commissions and
20 bonuses that we earned, so I don't know how that defense goes
21 to the jury.

22 THE COURT: Okay. I'm going to take this one out.
23 And if at the end of the case I see any evidence presented by
24 Defendants that Defendants paid Plaintiffs money that went
25 above and beyond commissions and bonuses, then we can have

1 discussion on this. You bring it up again. But right now,
2 this comes out.

3 Next issue.

4 MR. TROPP: Your Honor, if I may. I know the cases
5 that I cited that -- a central question for the jury would be
6 whether the Plaintiffs wages fell beneath the statutory minimum
7 wage, minimum amount, and it says, you know, affirmative
8 defenses can be properly -- a set-off can be asserted so long
9 as the set-off does not reduce the amount you can recover below
10 the statutory minimum wage.

11 And -- and I know originally in the statement of claim
12 that the Plaintiffs made was always about the minimum wage.
13 They talked about the minimum wage, and they computed the
14 overtime based on this minimum wage. But then all of a sudden
15 on the instructions, it's this calculation of taking the
16 commissions, these great amounts, and then, you know, figuring
17 out an hourly rate based on the high amounts of commissions
18 paid.

19 And what we're just saying is we should have the
20 set-off defense to show that at no point were the Plaintiffs --
21 did the Plaintiffs -- did they go periods without getting at
22 least minimum statutory minimum wage, like the cases we cite.

23 THE COURT: Mr. Cueto, perhaps you can understand your
24 party's position on this because I'm not understanding
25 Mr. Tropp's argument.

1 MR. CUETO: I understand that it's our position that
2 they -- at no time did they ever receive minimum wages.

3 THE COURT: They received more than minimum wage.

4 MR. CUETO: Exactly. I believe that's his point.

5 THE COURT: So what? It's not a minimum wage case, is
6 it?

7 MR. CUETO: Well, the --

8 THE COURT: I don't understand the point you're trying
9 to make. The Plaintiffs haven't said this is a minimum wage
10 case; you haven't. So I don't understand what you're saying by
11 either you or your cocounsel. What is the defense? Your
12 defense is that you paid them at least minimum wage? Is that
13 what you want to say to the jury?

14 MR. CUETO: That, frankly, they were not owed
15 anything.

16 THE COURT: That's your denial, right?

17 MR. TROPP: It's a denial.

18 THE COURT: That's your denial. All right.

19 Next issue.

20 MR. POLLOCK: Your Honor, just as a housekeeping
21 matter and so the record's clear, on the affirmative defense of
22 unclean hands --

23 THE COURT: Yes.

24 MR. POLLOCK: Referable to the complaint, which is
25 Docket Entry 14, Page 5, the other objection, if there is some

1 researches, the affirmative defense is pled -- was that
2 Plaintiffs' claims are barred in whole or in part by the
3 doctrine of unclean hands because the Plaintiffs at all times
4 claimed 1099 independent contractor status with the United
5 States Department of Treasury, Internal Revenue Service and in
6 internal documents and communications.

7 Regardless of whether this is an advisory verdict
8 that's being requested or not, I don't believe that the defense
9 as pled is appropriate to submit to the -- to the jury for the
10 Court's consideration as a matter of law because there is no
11 action that my client's could've taken that resulted as a
12 matter of fact and their having unclean hands and resulting in
13 the issues that they complain about.

14 THE COURT: Well, it's framed today by Mr. Tropp it's
15 a different theory of unclean hands than the one that was pled.

16 MR. POLLOCK: Right.

17 THE COURT: The other unclean hands that he described
18 pertained to taking confidential information or clients and
19 moving on and becoming very successful on their own right, and
20 so that doesn't match what was pled. And in any event, this is
21 not a jury issue.

22 MR. POLLOCK: Understood. I just wanted to have the
23 record reflect that there was -- that that changed.

24 Moving on, on Page 29, if there is no exemption, then
25 the language in 29 should come out.

1 THE COURT: Right.

2 Next.

3 MR. POLLOCK: Again, 31 is kind of a regurgitation of
4 exemptions which would likewise come out.

5 MR. CUETO: Your Honor, Mr. Cortes would like to use
6 the restroom.

7 THE COURT: He may.

8 MR. CUETO: Thank you.

9 MR. POLLOCK: We would request that from 31 through 32
10 in bold and underlined be stricken.

11 THE COURT: I will hear from Defense counsel.

12 MR. TROPP: Judge, I believe I took this one and
13 modelled jury instructions and -- and I understand you're
14 striking the part about the retail exemption. But why would --
15 on their exemptions, the part about Plaintiffs were not
16 employees and properly classified as independent contractor,
17 what would be the problem with that, Your Honor?

18 MR. POLLOCK: Your Honor, that's -- what the Defense
19 is asking you to do is include in the standard jury instruction
20 language which does not appear in there, including a statement,
21 affirmative statement, by the Court that would be instructing
22 the jury that Plaintiffs were not employees, which I think
23 would be improper. It's, likewise, I think Defendants'
24 position, and I think that's just a mere denial and not a
25 defense and shouldn't be instructed to the jury.

1 So I think this whole bold and underlined part, which
2 is a denial and a regurgitation of the retail sales exemption,
3 be removed.

4 THE COURT: Right. I think the second paragraph
5 that's underlined I've already addressed. That doesn't come in
6 at all, right? It's all talking about being exempt or not
7 exempt. Where is the instruction on employee versus
8 independent contractor?

9 MR. TROPP: I think it's 4.24.

10 THE COURT: On this submission, on Docket Entry 95.

11 MR. POLLOCK: It's the next page. It goes to 4.24.

12 THE COURT: Oh, it's covered there.

13 MR. POLLOCK: Yeah. So I don't think that language at
14 the top where it says exceptions -- exemptions --

15 THE COURT: Exemptions, right.

16 MR. POLLOCK: I think that comes out; the next part
17 comes out.

18 THE COURT: It all comes out.

19 All right. Next issue.

20 MR. POLLOCK: Next issue starts at Page 39. I guess
21 38 to 39 is -- I'm kind of unclear on what the part is objected
22 to by Defendants. However, I think the Court already ruled,
23 and we prepared the instructions based on the Court's prior
24 ruling on including commissions in the regular rate of pay for
25 purposes of calculating overtime.

1 THE COURT: I will hear from Defendants.

2 (Pause in proceedings.)

3 THE COURT: All right. This matter that -- all the
4 underlining comes out that appears on Page 40 and the bottom of
5 39.

6 Next issue. At the bottom of Page 44?

7 MR. POLLOCK: Correct, Your Honor. That's correct.

8 THE COURT: This is on recordkeeping, and the
9 Defendants want the jury to know they're not required to keep
10 records on independent contractors. What's Plaintiffs'
11 objection on that?

12 MR. POLLOCK: The citation to the statutory language.

13 THE COURT: No, we would take that out. I think the
14 rest is fair.

15 MR. POLLOCK: Okay.

16 THE COURT: All right. I think that's it, right?

17 MR. POLLOCK: I think so.

18 THE COURT: Okay. I would love a clean version of
19 this tomorrow, please, at some point so I can review it. It
20 doesn't have to be at 8 in the morning, but during the day, I'd
21 like that cleaned up so I can look at it.

22 Do we have a verdict form in final form?

23 MR. POLLOCK: I think we do. I think the -- there was
24 an asterisk in there. There was a placekeeper just in case the
25 Court wanted a jury question on the exemption issue, but if

1 there is no exemption issue, we don't need it.

2 THE COURT: All right.

3 MR. POLLOCK: So I think -- I can take a look, but I
4 think that's where we're at.

5 THE COURT: Right. The only remaining issue is
6 that -- that exemption under retail sales.

7 MR. POLLOCK: Right.

8 THE COURT: All right. Any other matters before we
9 begin tomorrow morning at 8?

10 MR. POLLOCK: We'll go from 8 to 6 tomorrow, Your
11 Honor?

12 THE COURT: We will. I have a calendar call at 9, so
13 we'll take a break at 9. That should go fairly quickly. All
14 right?

15 MR. POLLOCK: We should have a translator available
16 for tomorrow, and then we should hear more from our case. The
17 Defendants didn't agree to our translator, so I guess they'll
18 be bringing their own.

19 THE COURT: All right. Anything else?

20 MR. POLLOCK: And then we'll break for lunch, and
21 then -- and then is Mr. Cortes going to be cross-examined? I
22 guess he'll be cross-examined during Defendants' case in chief.

23 THE COURT: That's correct. That's my understanding.

24 Right, Mr. Tropp?

25 MR. TROPP: Correct.

1 THE COURT: Okay.

2 MR. POLLOCK: Perfect. Thank you, Your Honor.

3 THE COURT: So I do have a -- I believe I have a 12:30
4 brief status conference, so we'll definitely handle that during
5 the lunch break.

6 MR. POLLOCK: Okay. And, again, my apologies for the
7 timing issue, Your Honor.

8 THE COURT: That's all right. We needed the time,
9 anyway, for the jury charges.

10 MR. POLLOCK: Understood.

11 THE COURT: Okay. You all have a good evening.

12 MR. POLLOCK: Thank you. You too.

13 (The proceedings excerpt adjourned at 5:23 p.m.)
14
15

16 C E R T I F I C A T E

17 I hereby certify that the foregoing is an
18 accurate transcription of the proceedings in the
19 above-entitled matter.
20

21 08/30/2023

22 DATE

23 

24 STEPHANIE A. McCARN, RPR
25 Official United States Court Reporter
400 North Miami Avenue, Thirteenth Floor
Miami, Florida 33128
(305) 523-5518

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